

ARTICLE VIII: CONFIDENTIAL AND/OR PROPRIETARY INFORMATION

This clause shall apply to the oral or written communication between the parties, including the Government, CAO, AMTC Members, and PAHs; however, Article XI, Data Rights and Copyrights, shall control the rights in data for all data delivered and to be delivered in the performance of this Agreement and each Project Agreement.

A. Definitions

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

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

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

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

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

B. Exchange of Information

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

C. Confidentiality and Authorized Disclosure

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

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

D. Return of Confidential and/or Proprietary Information

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

E. Term

The obligations of the Receiving Party under this Article shall continue for a period of five (5) years after the expiration or termination of the Project Agreement under which the information was provided.

F. Flowdown

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

ARTICLE IX: PUBLICATION AND ACADEMIC RIGHTS

A. Use of Information

For the purposes of this Article, "Parties" means the Project Agreement Holder and the Government where collectively identified and "Party" where each entity is individually identified.

Subject to the provisions of Article VIII, Confidential and/or Proprietary Information, and this Article IX, the PAH and the Government shall have the right to publish or otherwise disclose information and/or data developed by the Government and/or the respective PAH under the Prototype Project. The Parties shall have only the right to use, disclose and exploit any such information or data in accordance with the rights held by them pursuant to this Agreement. Notwithstanding the above, the Parties shall not be deemed authorized by this paragraph alone to disclose any Confidential and/or Proprietary Information of the Government or the PAH.

B. Classified Research Projects

If a release of Confidential Information is for a classified Research Project, the provisions of the DoD Security Agreement (DD Form 441) and the DoD Contract Security Classification Specification (DD Form 254) apply.

C. Publication or Public Disclosure of Information

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

- (a) The PAH must receive written Government approval prior to Public Release of data developed by the Government and/or respective PAH(s) under the Prototype Projects. At least sixty (60) days prior to the scheduled release date, the PAH shall submit to the ALO at least two (2) copies of the information to be released.

The ALO will route the information to the cognizant Public Affairs Office for review and approval. The ALO and Redstone Arsenal Public Affairs Office are hereby designated as the approval authorities for the AO for such releases.

- (b) Where the PAH is an Academic Research Institution performing fundamental research on campus, the CAO shall require such PAHs to provide papers and publications for provision to the ALO for review and comment 60 days prior to formal paper/publication submission in accordance with the procedures in paragraph (a) above must be followed.
- (c) The Parties to this Agreement are responsible for assuring that an acknowledgment of Government support will appear in any publication of any material based on or developed under this Agreement, using the following language:

“Effort sponsored by the U.S. Government under Other Transaction number W9124P-18-9-0001 between AMTC and the Government. The U.S. Government is authorized to reproduce and distribute reprints for Governmental purposes notwithstanding any copyright notation thereon.”

- (d) The Parties to this Agreement are also responsible for assuring that every publication of material based on or developed under this Agreement contains the following disclaimer:

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

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

2. Notices

To avoid disclosure of Confidential and/or Proprietary Information belonging to the PAH and/or the Government and the loss of patent rights as a result of premature public disclosure of patentable information, any PAH that is proposing to publish or disclose such information shall provide advance notice to the CAO and identify such other parties that may have an interest in such Confidential and/or Proprietary Information. The CAO shall notify such parties at least sixty (60) calendar days prior to PAH submission for publication or disclosure by the publishing party, together with any and all materials intended for publication or disclosure relating to technical reports, data, or information developed during the term of and pursuant to this Agreement. The Government will notify the CAO, who will in turn notify the PAH, of any objection to disclosure within this sixty (60) day period, or else the PAH publishing party shall be deemed authorized to make such disclosure, as long as the publishing party has complied with the other provisions of this Article IX as well as Article VIII, Confidential and/or Proprietary Information.

3. Filing of Patent Applications

During the course of the sixty (60) calendar day period discussed above, the PAH shall provide notice to the CAO as to whether the PAH desires that a patent application be filed on any invention disclosed in such materials. In the event that the PAH to whom such Confidential and/or Proprietary Information belongs desires that such a patent application be filed, the PAH or the Government proposing to publish or disclose

such materials agrees to withhold publication and disclosure of such materials until the occurrence of the first of the following:

- (a) Filing of a patent application covering such invention, or
- (b) Written agreement, from the AO and the CAO (on behalf of the PAH) that no patentable invention is disclosed in such materials.

Further, during the course of any such sixty (60) calendar day period, the PAH shall notify the AO, through the CAO, if the PAH believes any of its Confidential and/or Proprietary Information has been included in the proposed publication or disclosure and shall identify the specific Confidential and/or Proprietary Information that needs to be removed from such proposed publication. The Government and the CAO, on behalf of the PAH proposing the publication or disclosure of such materials, agree to remove from the proposed publication or disclosure all such Confidential and/or Proprietary Information so identified by the CAO.

4. Public Announcements

Any public announcements (including press releases, website postings or other public statements) by any party regarding this Agreement or Project Agreements awarded thereunder shall follow the procedures set forth in this Article IX.

ARTICLE X: PATENT RIGHTS

A. Definitions

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

"Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

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

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

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

B. Allocation of Principal Rights

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

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

1. The PAH shall disclose each subject invention to the CAO within two (2) months after the inventor discloses it in writing to his company personnel responsible for patent matters. The disclosure to the CAO, or with prior authorization from the AO, to the Government, shall be in the form of a written

report and shall identify the Project Agreement under which the invention was made and the identity of the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure.

2. If the PAH determines that it does not intend to retain title to any such invention, the PAH shall notify the Government, through the CAO, in writing, within nine (9) months of the disclosure pursuant to Paragraph 1 above. However, in any case where publication, sale or public use has initiated the one (1) year statutory period wherein valid patent protection can still be obtained in the United States, the period for such notice may be shortened to a date that is no more than six (6) months prior to the end of the statutory period.
3. The PAH shall file its initial patent application (whether provisional or non-provisional) on a subject invention to which it elects to retain title within one (1) year after election of title or, if earlier, prior to the end of the statutory period wherein valid patent protection can be obtained in the United States after a publication, or sale or public use. The PAH may elect to file patent applications in additional countries (including with the European Patent Office and under the Patent Cooperation Treaty) within either ten (10) months of the corresponding initial patent application (whether provisional or non-provisional) or six (6) months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications, where such filing has been prohibited by a Secrecy Order.
4. After considering the position of the CAO on behalf of the PAH, a request for extension of the time for disclosure election and filing under this Article X, Paragraph C, may be approved by ACC-RSA, and ACC-RSA's approval shall not be unreasonably withheld.

D. Conditions When the Government May Obtain Title

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

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

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

The Parties agree that:

- (1) The PAH shall retain a non-exclusive, royalty-free license throughout the world in each Subject Invention to which the Government obtains title. The PAH's license extends to the domestic (including Canada) subsidiaries and affiliates, if any, of the PAH and includes the right to grant

sublicenses of the same scope to the extent that the PAH was legally obligated to do so at the time the Project under the Agreement was funded. The license is transferable only with the approval of the Government, except when transferred to the successor of that part of the PAH's business to which the invention pertains. Government approval for license transfer shall not be unreasonably withheld.

- (2) The PAH's domestic license may be revoked or modified by the Government to the extent necessary to achieve expeditious practical application of the Subject Invention pursuant to an application for an exclusive license submitted consistent with appropriate provisions at 37 CFR Part 404. The PAH's license shall not be revoked or modified in that field of use or in the geographical areas in which the PAH has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The PAH's license in any foreign country may be revoked or modified at the discretion of the Government to the extent the PAH, its licensees, or its subsidiaries or affiliates have failed to achieve practical application in that foreign country.
- (3) Before revocation or modification of the PAH's license, the Government must furnish the CAO under the OTA, and the CAO shall forward to the PAH, a written notice of the Government's intention to revoke or modify the license, and shall be allowed thirty (30) calendar days (or such other time as may be authorized for good cause shown) after the notice to show cause why the license should not be revoked or modified.

F. Action to Protect the Government's Interest

1. The PAH shall execute or have executed and promptly deliver to the Government all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the PAH elects to retain title, and (ii) convey title to the Government when requested under Paragraph D of this Article X, and to enable the Government to obtain patent protection throughout the world in that Subject Invention.
2. The PAH agrees to require, by written agreement, that its employees working on Projects, other than clerical and non-technical employees, agree to disclose promptly in writing to personnel identified as responsible for the administration of patent, each subject invention made under this Agreement in order that the CAO, on behalf of the PAH, can comply with the disclosure provisions of the OTA's Paragraph C of Article X, and to execute all papers necessary to file the patent applications on the Subject Invention, and establish the Government's rights in the Subject Invention. The PAH acknowledges and shall instruct its employees through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
3. The PAH shall notify the Government CAO of any decision not to continue the prosecution of a patent application, pay maintenance fees or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty (30) days before the expiration of the response period required by the relevant patent office.
4. The PAH shall include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with U.S. Government support under Agreement No. W9124P-18-9-0001 awarded by the Army Contracting Command-Redstone Arsenal to the AMTC. The Government has certain rights in the invention."

G. Lower-Tier Agreements

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

H. Reporting on Utilization of Subject Inventions

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

I. Preference for American Industry

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

J. March-in Rights

March-in Rights will follow the procedures set forth in 37 CFR 401.6.

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

- (1) Such action is necessary because the PAH, assignee or licensees have not taken effective steps, consistent with the intent of this Agreement, to achieve practical application of the subject invention;
- (2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the PAH, assignee, or their licensees;
- (3) Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by the PAH, assignee, or licensees; or
- (4) Such action is necessary because the agreement required by Paragraph (I) of this Article X, Patent Rights, has not been obtained or waived or because a licensee who has the exclusive right to use or sell any subject invention in the United States is in the breach of such agreement.

The Government shall notify the CAO as soon as practicable, but no later than five (5) calendar days following the exercise of any rights under this Paragraph J.

K. Opportunity to Cure

Certain provisions of Article X provide that the Government may gain title or a license to a Subject Invention by reason of the PAH's action, or failure to act, within the times required by this Article. Prior to claiming such rights (including any rights under Article X, Paragraph J), the Government will give written notice to

the PAH, through the CAO, of the Government's intent, and afford the PAH a reasonable time to cure such action or failure to act. The length of the cure period will depend on the circumstances, but in no event will be more than sixty (60) days. The PAH may also use the cure period to show good cause why the claiming of such title or right would be inconsistent with the intent of this Agreement in light of the appropriate timing for introduction of the technology in question, the relative funding and participation of the parties in the development of the invention, and other factors.

L. Background Inventions

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

M. Survival Rights

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

N. Patent Rights Clauses

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

FAR 52.227-1 Authorization and Consent
FAR 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement
FAR 52.227-3 Patent Indemnity
FAR 52.227-6 Royalty Information
FAR 52.227-9 Refund of Royalties

FAR 52.227-3, Patent Indemnity, FAR 52.227-6, Royalty Information, and FAR 52.227-9, Refund on Royalties will be listed in the Project award documentation if applicable to a given Project on a case-by-case basis.

ARTICLE XI: DATA RIGHTS AND COPYRIGHTS

A. General

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

DFARS 252.227-7013 Rights in Technical Data – Noncommercial Items
DFARS 252.227-7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation
DFARS 252.227-7015 Technical Data – Commercial Items
DFARS 252.227-7016 Rights in Bid or Proposal Information
DFARS 252.227-7018 Rights in Noncommercial Technical Data and Computer Software – Small Business Innovation Research (SBIR) Program
DFARS 252.227-7019 Validation of Asserted Restrictions – Computer Software
DFARS 252.227-7020 Rights in Special Works
DFARS 252.227-7021 Rights in Data-Existing Works
DFARS 252.227-7025 Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends

DFARS 252.227-7026 Deferred Delivery of Technical Data or Computer Software
DFARS 252.227-7027 Deferred Ordering of Technical Data or Computer Software
DFARS 252.227-7030 Technical Data – Withholding of Payment
DFARS 252.227-7037 Validation of Restrictive Markings on Technical Data

The specific clauses applicable to a given Project will be listed in the Project award documentation.

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

In the event technical data are exchanged with a notice indicating that the data is protected under copyright as a published, copyrighted work, and it is also indicated on the data that such data existed prior to, or was produced outside of, the relevant Project, the Party receiving the data and others acting on its behalf may only reproduce, distribute and prepare derivative works for the purpose of carrying out that Party's responsibilities under this Agreement. The PAH is responsible for affixing appropriate markings indicating the rights of the Government on all technical data delivered under this Agreement.

Nothing in this Agreement shall preclude the PAH from having status and data rights afforded under a Small Business and Innovation Research ("SBIR") funding agreement for work funded under this Agreement, if otherwise properly qualified, and provided that the work derives from, extends, or logically concludes effort(s) performed under prior SBIR funding agreements.

B. Data First Produced by the Government

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

C. Prior Technology

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

D. Project Agreement Holder's Prior Technology

In the event it is necessary for the PAH to furnish the Government with data which existed prior to, or was produced outside of, this Agreement, and such data embodies trade secrets or comprises commercial or financial information which is privileged or confidential, and such data is so identified with a suitable notice or legend, the data will be maintained in confidence and disclosed and used by the Government and such Government Contractors or contract employees that the Government may hire on a temporary or periodic

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

E. Lower-Tier Agreements

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

F. Other Instances

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

G. Survival Rights

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

H. Government Direction for Alternate Language

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

ARTICLE XII: EXPORT CONTROL

A. Export Compliance

Each Party agrees to comply with U.S. Export regulations including, but not limited to, the requirements of the Arms Export Control Act, as amended 22 U.S.C. § 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. § 120 et seq.; and the Export Administration Act of 1979, 50 U.S.C. app. § 2401-2420. Each party is responsible for obtaining from the Government export licenses or other authorizations/approvals, if required, for information or materials provided from one party to another under this Agreement.

Accordingly, the PAH shall not export, directly, or indirectly, any products and/or technology, Confidential Information, Trade Secrets, or Classified and Unclassified Technical Data in violation of any U.S. Export laws or regulations.

B. Flowdown

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

ARTICLE XIII: TITLE AND DISPOSITION OF PROPERTY

A. Definitions

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

B. Title to Property

Title to any item of property valued at \$10,000 or less that is acquired by the PAH pursuant to a Project Agreement shall vest with the PAH upon acquisition with no further obligation of the Parties unless otherwise determined by the Agreements Officer. Should any item of property with an acquisition value greater than \$10,000 be required, the CAO, at the request of the PAH and on its behalf, shall obtain prior written approval from the Agreements Officer, if the selected EWP or project did not specifically identify the proposed acquisition in the cost proposal. Upon written approval of the Agreements Officer, title to this property also shall vest in the PAH upon acquisition. The PAH shall be responsible for the maintenance, repair, protection and preservation of all such property at its own expense. Property acquired pursuant to this clause shall not be considered as in exchange for services in performance of the Project, but shall be considered a Government contribution to the Project.

C. Government Furnished Property

The Government may provide the PAH Government Furnished Property (GFP) to facilitate the performance of individual Prototype Agreements under this Agreement. Such GFP will be specifically identified to a particular Project via a modification to the OTA and subsequently incorporated into a resulting Prototype Project Agreement. The GFP shall be utilized only for the performance of that individual Project unless a specific exception is made in writing by the Agreements Officer.

Except for AMTC Members who have an adequate property management system as defined in FAR 52.245-1 (Jan 2017) and are using this system to manage the GFP provided in this Agreement (whose risk and responsibilities are defined therein), AMTC Members who receive GFP for a Project Agreement shall assume the risk of and be responsible for any loss or destruction of, or damage to, any GFP while in its possession or control, with the exception of reasonable wear and tear or reasonable and proper consumption.

The PAH shall obtain explicit written authorization for any transfer or disposition of Government Furnished Property.

ARTICLE XIV: SAFETY

A Safety Survey will be conducted by the Government prior to the handling of explosives, production of any hardware or fire testing under any Project Agreement.

If a Project Agreement involves Arms, Ammunition and Explosives (AA&E) or other Hazardous Material, the following clauses MUST be reviewed for applicability to the Project and incorporated into the Project Agreement if applicable. See Attachment I for the AMRDEC Safety Requirements and the full text of below clauses.

- DFARS 252.223-7002 - Safety Precautions for Ammunition and Explosives
- DFARS 252.223-7003 - Change in Place of Performance – Ammunition and Explosives
- DFARS 252.223-7007 - Safeguarding Sensitive Conventional Arms, Ammunition and Explosives
- FAR 52.223-3 – Hazardous Material Identification and Material Safety Data
- FAR 52.236-13 – Accident Prevention

The PAH shall adhere to all local, state and Federal rules and regulations required in order to maintain a safe and non-hazardous occupational environment throughout the duration of the Project Agreements. The listed Department of Defense Directives, Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS), and AMRDEC clauses will be incorporated into the Project Agreements by reference with the same force and effect as if they were given in full text.

ARTICLE XV: OPSEC & SECURITY

A. OPSEC / Security Requirements

The PAHs shall comply with the requirements of the applicable DoD Contract Security Classification Specification (DD Form 254) and shall utilize the Security Classification Guides (SCG) provided by the U.S. Government for classification guidance. As required, the SCGs will be provided by the Government specific to the Project.

Work performed by a PAH under a Project Agreement may involve access to Communications Security (COM-SEC) Information; Restricted Data; Formerly Restricted Data; SCI and Non-SCI Intelligence information; Special Access Information; NATO Information; Foreign Government Information; For Official Use Only Information (FOUO); and Secure Internet Protocol Router Network (SIPRNET). In performing Project Agreements under this Agreement, the PAH may Receive and Generate Classified Material; Fabricate, Modify, and/or Store Classified Hardware; Have Access to US Classified Information outside the US, Puerto Rico, US Possessions and Trust Territories; Require a COMSEC Account; Have Operations Security (OPSEC) Requirements; Be Authorized to use the Defense Courier System; and/or Process Classified Information at Redstone Arsenal, AL following AR 25-2 for guidance on classified computer processing.

As required by the specific DD254 associated with individual Project Agreements, the PAH shall maintain a TOP SECRET (TS) facility clearance and have sufficient number of employees with a Personnel Security Clearance at the TS / (Sensitive Compartmented Information) SCI / (Special Access Information) SAP and SECRET levels to meet the requirements of the Projects requested.

The below listed Department of Defense Directives, Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS) clauses will be incorporated into the Project Agreements by reference with the same force and effect as if they were given in full text.

- a) DoDM 5200.01 DoD Information Security Program, 24 Feb 12
 - b) DoD 5200.2-R Personnel Security Regulation, Jan 87
 - c) DoD 5220.22-M National Industrial Security Program, 28 Feb 06
 - d) DoDI 5200.01, Information Security Program and Protection of Sensitive Compartmented Information, Vol. 1-4 Mar 13
 - e) DoD 5400.7-R, DOD Freedom of Information Act, 25 Jan 17
 - f) DoDI 2000.12, Antiterrorism Program, 1 Mar 12
 - g) FAR Clause 4.402, Safeguarding Classified Information Within Industry
 - h) FAR Clause 52.204-2, Security Requirements, Aug 1996
1. Each Prototype Project Scope of Work will be provided by the Agreements Officer Representative (AOR).
 2. Specific applicable policies, instructions, and regulations will be identified in each Prototype Project. Throughout the life of the Agreement, if any policy, instruction, or regulation is replaced or superseded, the replacement or superseding version shall apply.
 3. Security Incidents and Violations. The PAH shall immediately notify the AOR and Cognizant Security Office of any actual security violation, security incident, or of any indication of a potential unauthorized disclosure or compromise of classified or sensitive but unclassified information.

4. Anti-Terrorism (AT) Level I Training. This provision is for PAH employees with an area of performance within an Army controlled installation, facility or area. All PAH employees requiring access to Army installations, facilities and controlled access areas shall complete AT Level I awareness training within thirty (30) calendar days after Project start date or effective date of incorporation of this requirement into the Project, whichever is applicable. PAH shall submit certificates of completion for each affected employee and PAH employee to the AOR or to the Agreements Officer, if an AOR is not assigned, within thirty (30) calendar days after completion of training by all employees or personnel. AT level I awareness training is available at the following website: <https://jkodirect.jten.mil>.
5. Anti-Terrorism Awareness Training for PAH Personnel Traveling Overseas. PAH employees shall be made available to receive Government provided area of responsibility specific AT awareness training as directed by AR 525-13. Specific AOR training content is directed by the combatant commander, with the unit Anti-terrorism Officer (ATO) being the local point of contact.
6. iWATCH Training. PAH employees with an area of performance within an Army controlled installation, facility or area shall brief all employees on the local iWATCH program (training standards provided by the requiring activity ATO). This local developed training will be used to inform employees of the types of behavior to watch for and instruct employees to report suspicious activity to the AOR. This training shall be completed within thirty (30) calendar days of a Project Agreement award and within thirty (30) calendar days of new employees' commencing performance with the results reported to the AOR NLT thirty (30) calendar days after Project completion.
7. PAH Employees that Require Handling or Access to Classified Information. PAH employees shall comply with FAR 52.204-2, Security Requirements. This clause involves access to information classified "Confidential," "Secret," or "Top Secret" and requires PAH employees to comply with— (1) The Security Agreement (DD Form 441), including the National Industrial Security Program Operating Manual (DoD 5220.22-M); any revisions to DOD 5220.22-M, notice of which will be furnished to the PAH.
8. Threat Awareness Reporting Program Training. For all PAH employees with security clearances. Per AR 381-12 Threat Awareness and Reporting Program (TARP), PAH employees must receive annual TARP training presented by a Counterintelligence Special Agent. Contact the Redstone Arsenal MI Detachment at 256-313-5186 for scheduling.
9. PAH Employees Requiring Common Access Card (CAC). Before CAC issuance, the PAH 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 PAH 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 6 months or more. At the discretion of the sponsoring activity, an initial CAC may be issued based on a favorable review of the FBI fingerprint check and a successfully scheduled NACI at the Office of Personnel Management.
10. PAH Employees that do not Require CAC, but Require Access to a DoD Facility or Installation. PAH employees 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 (provided by government representative), or, at OCONUS locations, in accordance with status of forces agreements and other theater regulations.

11. Identification of PAH Employees. This provision is for PAH employees with an area of performance within an Army controlled installation, facility or area. The PAH (to include subcontractors) shall provide each employee a Redstone Arsenal Identification (ID) Badge, which includes at a minimum, the Company Name, Employee Name and a color photo of the employee. ID Badges for Key Personnel shall also indicate their job title. ID Badges shall be worn at all times during which the employee is performing work under this Agreement. Each PAH employee shall wear the ID Badge in a conspicuous place on the front of exterior clothing and above the waist except when safety or health reasons prohibit. The PAH employees shall be responsible for collection of ID Badges upon completion of the Project or termination of employee. A listing of issued identification cards shall be furnished to the Agreements Officer prior to the Project performance date and updated as needed to reflect PAH personnel changes. Foreign owned companies and foreign national contractors will only be permitted to perform under this Agreement when there are no qualified U.S. companies and /or U.S. contractors. All PAH personnel attending meetings, answering Government telephones, and working in other situations where their contractor status is not obvious to third parties are required to identify themselves as such to avoid creating an impression in the minds of members of the public that they are Government officials. They shall also ensure that all documents or reports produced by PAH employees are suitably marked as contractor products or that contractor participation is appropriately disclosed.
12. Security Education, Training & Awareness (SETA) Training. This provision is for PAH employees with an area of performance within an Army controlled installation, facility or area. All PAH employees requiring access to government installations, facilities and controlled access areas shall complete annual mandatory SETA awareness training within 30 calendar days after Project start date or effective date of incorporation of this requirement into the Project, whichever is applicable. The following URL is made available for your training: <https://www.lms.army.mil>. Upon completion of the training, you must provide certification to the Information Security Officer. Security Education, Training & Awareness covers Information Security, Personnel Security and Industrial Security Programs.
13. Combating Trafficking in Persons, Cyber Awareness Challenge, Personal Identification Information (PII) and Sexual Harassment Assault Response Program (SHARP) Training. This provision is for PAH employees with an area of performance within an Army controlled installation, facility or area. All PAH employees requiring access to government installations, facilities and controlled access areas shall complete Combating Trafficking in Persons, Cyber Awareness Challenge, Personal Identification Information (PII), and Sexual Harassment Assault Response Program (SHARP). The PAH employees shall submit certificates of completion for each affected PAH employee and subcontractor employee, to the AOR or to the Agreements Officer, if a AOR is not assigned, within 30 calendar days after completion of training by all PAH employees.
14. For Projects that Require OPSEC Training. Level I OPSEC Awareness Training: Per AR 530-1, Operations Security, all PAH employees shall complete Level I OPSEC Awareness Training within 30 calendar days of starting work under the Project. All PAH employees shall take the Level 1 OPSEC Awareness Training located at the below website and print the certificates demonstrating completion. The PAH employee shall submit certificates of completion for each affected PAH employee to the AOR, within 10 calendar days after completion of training by all PAH employees. Note: after the first screen, select User Type: Civilian/Contractor, then Service: Army, then Grade N/A. OPSEC awareness training is available at the following website: <https://securityawareness.usalearning.gov/opsec/index.htm>. The PAH must follow the AMRDEC OPSEC Plan in the performance of each Project.
15. Government Information Systems and Information Awareness Requirements. All PAH employees with access to a government information system must be registered in the ATCTS (Army Training Certification Tracking System) at commencement of services, and must successfully complete the DOD Cyber Awareness Challenge Training prior to access to the IS and then annually thereafter, and must sign an Acceptable Use Policy (AUP).

16. Information Assurance (IA)/Information Technology (IT) Training and/or Certification. Per DoD 8570.01-M , DFARS 252.239.7001 and AR 25-2, the PAH employees supporting IA/IT functions shall be appropriately trained and/or certified, as required upon Project award. The baseline certification as stipulated in DoD 8570.01-M must be completed upon Project award. Additional training for IA workforce positions must be completed within six months.
17. Access and General Protection/Security Policy and Procedures. PAH employees with an area of performance within an Army controlled installation, facility or area. PAH employees shall comply with applicable installation, facility and area commander installation/facility access and local security policies and procedures (provided by Government representative). The PAH also shall provide all information required for background checks to meet installation access requirements to be accomplished by installation Provost Marshal Office, Director of Emergency Services or Security Office. In addition to the changes otherwise authorized by the changes clause of this Agreement, should the Force Protection Condition at any individual facility or installation change, the Government may require changes in PAH security matters or processes. The PAH Human Resources/Security Officer is responsible for the collection of all Redstone Badges and CAC cards issued to their employees. The Human Resources/Security Officer will then turn over these credentials to the AOR. This applies when the Project expires; as well as, when a PAH employee resigns or is terminated. After accounting for all badges/CACs, the AOR will turn in the credentials at the One Stop Badging Office or CAC Office (MILPO). All PAH employees who are not in possession of the appropriate security clearance or access privileges, will be escorted in areas where they may be exposed to classified and/or sensitive materials and/or sensitive or restricted area.
18. Key Control. The PAH shall establish and implement methods of making sure all keys/key cards issued to the PAH by the Government are not lost or misplaced and are not used by unauthorized persons. NOTE: All references to keys include key cards. No keys issued to the PAH by the Government shall be duplicated. The PAH shall develop and follow procedures covering key control that shall be included in the Standard Operating Procedures. Such procedures shall include turn-in of any issued keys by personnel who no longer require access to locked areas. The PAH shall immediately report any occurrences of lost or duplicate keys/key cards to the Agreements Officer. In the event keys, other than master keys, are lost or duplicated, the PAH shall, upon direction of the Agreements Officer, re-key or replace the affected lock or locks; however, the Government, at its option, may replace the affected lock or locks or perform re-keying. When the replacement of locks or re-keying is performed by the Government, the total cost of re-keying or the replacement of the lock or locks shall be deducted from the milestone payment. In the event a master key is lost or duplicated, all locks and keys for that system shall be replaced by the Government and the total cost deducted from the milestone payment. The PAH shall prohibit access to Government issued keys/key cards by unauthorized personnel other than the PAH's employees. The PAH shall prohibit entry into controlled areas by unauthorized personnel other than the PAH's employees engaged in the performance of assigned work in those areas, or personnel authorized entrance by the Agreements Officer.
19. Lock Combinations. The PAH shall establish and implement methods of ensuring that all lock combinations are not revealed to unauthorized persons. The PAH shall ensure that lock combinations are changed when personnel having access to the combinations no longer have a need to know such combinations. These procedures shall be included in the PAH's Standard Operating Procedures.
20. For PAH personnel Authorized to Accompany U.S. Armed Forces. DFARS Clause 252.225-7040, Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States, shall be used in Projects that authorize PAH personnel to accompany U.S. Armed Forces deployed outside the U.S. in contingency operations; humanitarian or peacekeeping operations; or other military operations or exercises, when designated by the combatant commander. The clause discusses the following AT/OPSEC related topics: required compliance with laws and regulations, pre-

deployment requirements, required training (per combatant command guidance) and personnel data required.

21. For Projects Requiring Performance or Delivery in a Foreign Country. DFARS Clause 252.225-7043, Antiterrorism/Force Protection Policy for Defense Contractors Outside the U.S., shall be used in Projects that require performance or delivery in a foreign country. This clause applies to both contingencies and non-contingency support. The key AT requirement is for non-local national PAH personnel to comply with theater clearance requirements and allows the combatant commander to exercise oversight to ensure the PAH's compliance with combatant commander and subordinate task force commander policies and directives.
22. Project Awards Involving Storing of HAZMAT and/or Arms, Ammunition and Explosives (AA&E). For Projects requiring storage of Hazardous Material, use FAR Clause 52.223-3 and/or Arms, Ammunition and Explosives (AA&E), use DFARS Clause 252.223-7007. AA&E as used in this clause, means those items within the scope (chapter 1, paragraph B) of DoD 5100.76-M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.
23. Privacy Act. The PAH shall ensure that employees assigned to the Project understand and comply with DoD 5400.7, DoD Freedom of Information Act Program, and Privacy Act Program. These directives set policy and procedures for the disclosure of records to the public and for making, handling, transmitting, and safeguarding For Official Use Only (FOUO) material. In addition, they set guidelines for collecting, safeguarding, maintaining, using, accessing, amending, and disseminating personal data kept in systems of records.
24. Cybersecurity (CS). The PAH shall adhere to all applicable CS regulations and security policies including Executive Order 13556, Controlled Unclassified Information, National Institute of Standards and Technology (NIST) 800 Series Special Publications, and the Federal Information Security Management Act (FISMA). The PAH will work with the Program Manager (PM) and Original Equipment Manufacturer (OEM), as specified in the individual project's SOW, to support the creation and sustainment of the Risk Management Framework (RMF) packages and all the contents therein. The PAH shall obtain and maintain required clearances up to TS/SCI to obtain Government provided access to critical threat information. The PAH shall perform vulnerability assessments (e.g. scan systems for vulnerabilities), and apply technical/non-technical remediations in collaboration with the Government customer to support accreditation decisions. The PAH shall be certified or trained at the level required to conduct the cyber mission. The PAH shall ensure it is knowledgeable on current and emerging vulnerabilities and mitigation strategies for the tactical system. The PAH shall participate in technical and non-technical meetings, as defined in the individual project's SOW, to identify the tailored set of security controls and ensure they are implemented appropriately into any developmental efforts.
25. Hazardous Materials. All PAH activities shall be in compliance with applicable federal, state and local environmental laws and regulations. For this Agreement, "Tracked HAZMATs" in NAS 411 should be defined as Emergency Planning and Community Right-To-Know Act (EPCRA) 302/313 listed chemicals. The PAH shall report the data elements found in MIL-STD-882E, Task 108, section 108.2.4 a, b, and d for Tracked HAZMATs. The PAH shall report coatings (identified by MIL SPEC), functional fluids (e.g. coolant, hydraulic fluid, lubricants, etc), and energetics/solid rocket motor components (including Explosives Class Number) with the same 108.2.4 a, b, and d data elements. The PAH shall provide Material Safety Data Sheets (MSDSs) or Safety Data Sheets (SDSs) for all reported materials. The PAH shall not use any Class I or Class II Ozone Depleting Chemical/Ozone Depleting Substance (ODC/ODS), identified by the lists at <http://www.epa.gov/ozone-layer-protection/ozone-depleting-substances>, in the manufacture or support of items required by the Project Award unless approved IAW Army ODS policy and/or Title 10 U.S.C. § 2402. All ODS alternatives must be in compliance with the U.S. Environmental Protection Agency (EPA) Significant New Alternatives Policy (SNAP) program and identified as approved – per the specific application – in the lists at <http://www.epa.gov/ozone/snap/lists/>. All ODS alternatives must also receive a Toxicity Clearance for the specific application from the US

Army Public Health Center. The PAH shall list any hazardous material, as defined NAS 411-1, to be used for the maintenance, sustainment, and demilitarization of the end item under the Project Award. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. The PAH hazardous materials list shall be updated during performance of the Project whenever the PAH determines that any other material to be used in the maintenance, sustainment, and demilitarization of the end item under the Project Award is hazardous.

26. Section 508 Compliance. All electronic and information technology (EIT) procured or developed through an awarded Project Agreement must meet the applicable accessibility standards at 36 CFR 1194, unless an agency exception to this requirement exists. 36 CFR 1194 implements Section 508 of the Rehabilitation Act of 1973, as amended, and is viewable at <http://www.access-board.gov/sec508/508standards.htm>.

B. Safeguarding Covered Defense Information and Cyber Incident Reporting

Project Agreements shall include DFARS 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting (OCT 2016), as it pertains to each Project.

C. Flowdown for OPSEC/Security Requirements

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

ARTICLE XVI: CIVIL RIGHTS ACT

This Agreement is subject to the compliance requirements of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. § 2000d et seq.) relating to nondiscrimination in Federally assisted programs. The PAH agrees to sign an Assurance of Compliance with the nondiscriminatory provisions of the Act (see Attachment II).

ARTICLE XVII: NO SMALL BUSINESS AFFILIATION

The Parties hereby acknowledge that the AMTC has been formed to develop and mature guided weapons systems technologies and aviation and missile manufacturing technologies, involving industry, academia and the Government. Every Member in the Consortium is independent of the other businesses and entities in the Consortium, and there is no affiliation between Consortium Member Entities within the definition of 13 C.F.R. § 121.103 of the Federal small business regulations and no such affiliation is intended either by the formation or implementation of the Consortium. Small businesses are merely members with no ownership rights in the Consortium.

ARTICLE XVIII: ANTITRUST

The Consortium Member Entities agree to comply with all applicable U.S. laws, including U.S. antitrust laws.

ARTICLE XIX: REPRESENTATIONS AND WARRANTIES

Each Party to this Agreement represents and warrants to the other Party(ies) that (1) it is free to enter into this Agreement; (2) in so doing, it will not violate any other agreement to which it is a party; and (3) it has

taken all action(s) necessary to authorize the execution and delivery of this Agreement and the performance of its obligations under this Agreement.

ARTICLE XX: LIABILITY OF THE PARTIES

A. Waiver of Liability

For the purposes of this Article, "Parties" means the CAO, the Project Agreement Holder and the Government where collectively identified and "Party" where each entity is individually identified.

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

B. Damages

The Parties shall not be liable to each other for consequential, punitive, special and incidental damages or other indirect damages, whether arising in contract (including warranty), tort (whether or not arising from the negligence of a Party) or otherwise, except to the extent such damages are caused by a Party's willful misconduct. Notwithstanding the foregoing, claims for contribution toward third-party injury, damage, or loss are not limited, waived, released, or disclaimed.

C. Extension of Waiver of Liability

The PAH agrees to extend the waiver of liability set forth above to subcontractors at any tier under a Project Agreement by requiring them, by contract or otherwise, to agree to waive all claims described above against the Parties to this Agreement. The PAH also agrees to flow down the damages limitation set forth above to subcontractors at any tier.

D. Applicability

Notwithstanding the other provisions of this article, this Waiver of Liability shall not be applicable to:

- (1) Claims between the CAO, the PAH, and the Government regarding a breach, noncompliance, or nonpayment of funds;
- (2) Claims for damage caused by willful misconduct; and
- (3) Intellectual property claims.

E. Limitation of Liability

In no event shall the liability of the Government, the CAO, or the PAH, or any other entity performing research activities under a Project Agreement exceed the amount obligated by the Government for that Project Agreement. If cost-sharing occurs, the liability of the PAH under a specific Project Agreement is limited to the amount committed as a Cash Contribution or In-Kind Contribution by the PAH.

Nothing in this Article shall be construed to create the basis of a claim or suit where none would otherwise exist.

The Government does not contemplate any unusually hazardous risks being associated with the awarded Project Agreements; however, the Government will consider going forward with a request for special indemnification or the inclusion of specially negotiated liability provisions where a Project Agreement, as identified by the Government or by the CAO, on behalf of the PAH may pose a risk of such nature.

ARTICLE XXI: GENERAL PROVISIONS

A. Fees

Any fee or profit proposed by the PAH will be part of the negotiation of each Project Agreement.

B. Waiver

No waiver of any rights shall be effective unless assented to in writing by the Party to be charged, and the waiver of any breach or default shall not constitute a waiver of any other right hereunder or any subsequent breach or default.

C. Section Headings

The headings and subheadings of the sections of this Agreement are intended for convenience or reference only and are not intended to be a part of, or to affect the meaning or interpretation of, this Agreement.

D. Severability

In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision; provided that no such severability shall be effective if the result of such action materially changes the economic benefit of this Agreement to the Parties.

E. Force Majeure

No failure or omission by the CAO or the PAH in the performance of any obligation of this Agreement shall be deemed a breach of this Agreement or create any liability if the same shall arise from any cause or causes beyond the control of the Parties, including but not limited to, the following: acts of God; acts or omissions of any Government; any rules, regulations or orders issued by any Governmental authority or by any officer, department, and agency or instrumentality thereof; fire; storm; flood; earthquake; accident; war; rebellion; insurrection; riot; and invasion and provided that such failure or omission resulting from one of the above causes is cured as soon as is practicable after the occurrence of one or more of the above mentioned causes.

F. Right to Develop Independently

Nothing in this Agreement will impair the CAO's, the PAH's, or the Government's right to independently acquire, license, develop or have developed, utilize or otherwise exploit information and technology with the same or similar uses or functions as the information or technology that is the subject of the OTA's Technical Objectives or any Project Agreement issued pursuant to this Agreement.

ARTICLE XXII: 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 except that it is agreed that either party may assign this Agreement to its affiliates or to the successors or assignees of a substantial portion of its business interests to which this Agreement directly pertains without prior written consent.

ARTICLE XXIII: ORDER OF PRECEDENCE

In the event of any inconsistency between the terms of this Agreement and the Project Agreements, the inconsistency shall be resolved by giving precedence in the following order: (1) this Agreement; (2) Attachments to this Agreement; (3) the Project Agreement documentation (including but not limited to the Project Agreement and the PAH proposal selected for funding by the Government). However, specifically negotiated Project Agreement terms will govern over the general terms of the Project and the general terms of this Agreement.

ARTICLE XXIV: EXECUTION

This Agreement constitutes the entire agreement of the Parties and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions among the Parties, whether oral or written, with respect to the subject matter hereof. This Agreement may be revised only by written consent of the AMTC and the CAO.
