This agreement falls under Other Transaction Authority (OTA), not the Federal Acquisition Regulation (FAR). By incorporating the U.S. Government's terms and conditions directly into Section I, the terms and conditions a core component of the agreement, eliminating the need for a separate attachment.

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ARTICLE 1: DEFINITIONS AND ACRONYMS

1.1 "Acquisition" means the acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, Request for Prototype Proposal and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

1.2 "Acceptance" means the act of an authorized representative of the Government by which the Government assents to ownership of existing and identified supplies, or approves specific services rendered, as partial or complete performance of the contract.

1.3 "Adequate security" means protective measures that are commensurate with the consequences and probability of loss, misuse, or unauthorized access to, or modification of information.

1.4 "Administrative Agreements Officer (AAO)" is the Army Contracting Activity warranted Agreements Officer delegated and authorized to act in an administrative capacity in addition to the AO.

1.5 "Agreement" or "OTA" refers to the Other Transaction Agreement, as authorized under 10 U.S.C. 4022, between the Government and COMPANY this Agreement. OTA also refers to Other Transaction Authority. The term 'other transaction authority' means the authority provided under sections 4021 and 4022 of title 10, United States Code and any other code that uses such similar authorities.

1.6 "Agreements Officer (AO)" is the U.S. Army Mission & Installation Contracting Command (MICC) Activity warranted official authorized to sign the final agreement for the Government. Throughout the OTA, this individual may also be referred to as the Contracting Officer (KO).

1.7 "Agreements Officer's Representative (AOR)" is the individual designated by the Government on a per project basis to monitor all technical and administrative

aspects. Throughout the OTA, this individual may also be referred to as the Contracting Officer Representative (COR).

1.8 “Claim” means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this Agreement.

1.9 “COMPANY” or “Company” means any commercial business that is the other signatory to this agreement beyond the U.S. Government. This term includes but is not limited any business formed under United States of America state laws, informal entities such as sole proprietorships, partnering firms, Joint Ventures.

1.10 “COMPANY attributional/proprietary information” means information that identifies the COMPANY(s), whether directly or indirectly, by the grouping of information that can be traced back to the COMPANY(s) (e.g., program description, facility locations), personally identifiable information, as well as trade secrets, commercial or financial information, or other commercially sensitive information that is not customarily shared outside of the company.

1.11 “Compromise” means disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media may have occurred.

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

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

1.14 “Confidential Information” means information and materials of a Disclosing Party which are designated as confidential or as a Trade Secret in writing by such Disclosing Party, whether by letter or by use of an appropriate stamp or legend, prior to or at the same time any such information or materials are disclosed by such Disclosing Party to the Receiving Party. Notwithstanding the foregoing, materials and other information which are orally, visually, or electronically disclosed by a Disclosing Party, or are disclosed in writing without an appropriate letter, stamp, or legend, shall constitute Confidential Information or a Trade Secret if such Disclosing Party, within thirty 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. “Confidential Information” includes any information and materials considered a Trade Secret by the COMPANY on its own behalf or on behalf of their subcontractors or suppliers.

1.15 “Contracting Activity” means an element of an agency designated by the agency head and delegated broad authority regarding acquisition functions. It also means elements or another agency designated by the director of a defense agency which has been delegated contracting authority through its agency charter.

1.16 “Covered COMPANY information system” means an unclassified information system that is owned, or operated by or for, a COMPANY and that processes, stores, or transmits covered defense information.

1.17 “Controlled Unclassified Information (CUI)” means unclassified information that requires safeguarding or dissemination controls, pursuant to and consistent with applicable law, regulations, and Government-wide policies. Instructions for the use, marking, dissemination, and storage of CUI can be found in DoD Instruction 5200.48, “Controlled Unclassified Information (CUI).”

1.18 “Cyber incident” means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein.

1.19 “Data” means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to agreement administration, such as financial, administrative, cost or pricing, or management information.

1.20 “Date of Completion” is the date on which all work is completed as identified in Design and Construction Schedule.

1.21 “Days” means calendar days unless otherwise stated.

1.22 “Developed” means that an item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered “developed,” the item, component, or process need not be at the stage where it could be offered for

sale or sold on the commercial market, nor must the item, component, or process be actually reduced to practice within the meaning of Title 35 of the United States Code.

1.23 “Development” means the systematic use of scientific and technical knowledge in the design, development, testing, or evaluation of a potential new product or service (or of an improvement in an existing product or service) to meet specific performance requirements or objectives. It includes the functions of design engineering, prototyping, and engineering testing.

1.24 “Disclosing Party” means COMPANY, or their subcontractors or suppliers, or the Government who discloses Confidential Information.

1.25 “Domestic End Product” means an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 65 percent of the cost of all its components, for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029.

1.26 “End Product” means those articles, materials, and supplies to be acquired under this Agreement for public use.

1.27 “F.o.b.” means free on board. This term is used in conjunction with a physical point to determine-

a. The responsibility and basis for payment of freight charges; and
b. Unless otherwise agreed, the point where title for goods passes to the buyer or consignee.

1.28 “F.o.b. destination” means free on board at destination; *i.e.,* the seller or consignor delivers the goods on seller’s or consignor’s conveyance at destination. Unless the contract provides otherwise, the seller or consignor is responsible for the cost of shipping and risk of loss.

1.29 “F.o.b. origin” means free on board at origin; *i.e.,* the seller or consignor places the goods on the conveyance. Unless the contract provides otherwise, the buyer or consignee is responsible for the cost of shipping and risk of loss.

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

1.31 “Foreign Firm or Institution” means a firm or institution organized or existing under the laws of a country other than the United States, its territories, or

possessions. The term includes, for purposes of this Agreement, any agency or instrumentality of a foreign government; and firms, institutions or business organizations which are owned or substantially controlled by foreign governments, firms, institutions, or individuals.

1.32 “Government” means the U.S. Government.

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

1.34 “Government purpose” means any activity in which the United States Government is a party, including cooperative agreements with international or multinational defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. 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.

1.35 “Inspection” means examining and testing supplies or services to determine whether they conform to contract requirements.

1.36 “Invoice” means the Company’s bill or written request for payment under the Agreement for supplies delivered or services performed.

1.37 “Key Personnel” means those persons identified in this Agreement as being essential to the successful performance of the work.

1.38 “Know-How” means all information including, but not limited to discoveries, formulas, materials, inventions, processes, ideas, approaches, concepts, techniques, methods, software, programs, documentation, procedures, firmware, hardware, technical data, specifications, devices, apparatus and machines.

1.39 “Latent Defect” means a defect that exists at the time of acceptance but is not discoverable by a reasonable inspection.

1.40 “Limited use rights” means the rights 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.

1.41 “Limited rights data” means data, other than computer software, that embody trade secretes or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at

private expense, including minor modifications. (Agencies may, however, adopt the following alternate definition: Limited rights data means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

1.42 “Malicious software” means computer software or firmware intended to perform an unauthorized process that will have adverse impact on the confidentiality, integrity, or availability of an information system. This definition includes a virus, worm, Trojan horse, or other code-based entity that infects a host, as well as spyware and some forms of adware.

1.43 “Media” means physical devices or writing surfaces including, but is not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which covered defense information is recorded, stored, or printed within a covered COMPANY information system.

1.44 “Modification” means any written change in the terms of this Agreement. A bilateral modification is signed by both Parties. A unilateral modification is signed only by the AO.

1.45 “Non-Personal Services” means a service contract under which the personnel rendering the services are not subject to the supervision and control usually prevailing in relationships between the Government and its employees.

1.46 “Operationally critical support’’ means supplies or services designated by the Government as critical for airlift, sealift, intermodal transportation services, or logistical support that is essential to the mobilization, deployment, or sustainment of the Armed Forces in a contingency operation.

1.47 “Receiving Party” means COMPANY, or their subcontractors or suppliers, or the Government who receives Confidential Information disclosed by a Disclosing Party.

1.48 “Service Employee” means any person engaged in the performance of this Agreement other than any person employed in a bona fide executive, administrative, or professional capacity.

1.49 “Services” or “Service Contract” means a contract that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply.

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

1.51 “Supplies” means all property except land or interest in land. It includes (but is not limited to) public works, buildings, facilities, ships, aircraft, and machine tools.

1.52 “Technical Data” means recorded information, regardless of form or method of recording, of a scientific or technical nature. It may include research data, drawings, manuals, and specifications.

1.53 “Termination for Cause” means the exercise of the Government’s right to completely or partially terminate a contract because of the contractor’s actual or anticipated failure to perform its contractual obligations.

1.54 “Termination for Convenience” means the exercise of the Government’s right to completely or partially terminate performance of work under a contract when it is in the Government’s interest.

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

ACRONYMS

ADR	Alternate Dispute Resolution
AFARS	Army Federal Acquisition Regulation Supplement
AMC	Army Material Command
AO	Agreement Officer
AOR	Agreement Officer Representative
CAC	Common Access Card
CSAM	Construction Scale Additive Manufacturing
CSRP	Central Shipping and Receiving Point
CTC	Combat Transaction Authority
DFARS	Defense Federal Acquisition Regulation Supplement
DOD	Department of Defense
DOW	Department of War
DPAS	Defense Priorities and Allocations System
FAR	Federal Acquisition Regulation
FPR	Follow-On Production Request
JBSA	Joint Base San Antonio
MICC	Mission and Installation Contracting Command
NACI	National Agency Check with Inquiries
NAICS	North American Industry Classification System
NIPR	Non-Classified Internet Protocol Router Network
OTA	Other Transaction Authority
PDF	Portable Document File

PIEE	Procurement Integrated Enterprise Environment
TR	Technical Requirements
TSC	Theater Support Center
USG	United States Government
U.S.C.	United States Code
VCC	Visitor Control Center

ARTICLE 2: SCOPE OF THE AGREEMENT

2.1 Background

Other Transactions Agreement (OTA) is the term commonly used to refer to the 10 U.S.C. § 4022 authority to enter transactions other than contracts, grants or cooperative agreements. The Department of Defense (DoD) currently has authority to make awards that are directly relevant to enhancing the mission effectiveness of military personnel and the supporting platforms, systems, components, or materials proposed to be acquired or developed by the DoD, or to improvement of platforms, systems, components, or materials in use by the armed forces. OTAs are acquisition instruments that are generally not subject to the Federal laws and regulations governing procurement (FAR based) contracts. As such, they are not required to comply with the Federal Acquisition Regulation (FAR), its supplements (e.g., Defense Acquisition Regulation (DFARS), Army Federal Acquisition Regulation (AFARS)) or laws that are limited in applicability to procurement contracts. Under the authority of 10 U.S.C. § 4022, this Production Other Transaction (P-OT) Agreement for Supplies that will directly support the acquisition of Caisson Wagons.

2.2 Scope

The COMPANY shall provide all necessary personnel, materials, equipment, supplies, and services to design, fabricate, deliver, and support TOG and associated items as specified in the Salient Characteristics, Attachment 001.

The services to be performed under this Agreement constitute Non-Personal Services, meaning the Company's personnel rendering the services are not subject to the supervision and control usually prevailing in relationships between the Government and its employees.

ARTICLE 3: TERM OF THE AGREEMENT AND TERMINATION

3.1 Term of this Agreement

The term of this Agreement shall commence upon the date of the last signature by the Parties and shall continue until the Date of Completion and final payment, unless terminated earlier in accordance with this Article. The period of performance is from [Start Date] to [End Date].

3.2 Termination Provisions

Subject to a reasonable determination that the program, or a project funded under the program, will not produce beneficial results commensurate with the expenditure of resources, the Government may terminate performance of work under this Agreement for convenience, in whole or in part, if the AO determines that a termination is in the Government's interest. The AO will terminate by delivering to the Company a Notice of Termination specifying the extent of termination and the effective date. After receipt of a Notice of Termination, and except as directed by the AO, the Company shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due:

(1) Stop work and direct its subcontractors/vendors/suppliers/partners to stop work as specified in the notice.
(2) Place no further orders for materials, services, or facilities, except as necessary to complete the continued portion of the Agreement.
(3) Terminate all orders to the extent they relate to the work terminated.
(4) Complete performance of any work not terminated, if applicable.
(5) Take any action that may be necessary, or that the AO may direct, for the protection and preservation of the property related to this project that is in the possession of the Company and in which the Government has or may acquire an interest.

If the Government terminates, then the Government will pay Company for all work and services rendered and performed up to date of the notice of termination plus reasonable demobilization costs actually incurred by the Company and Company's reasonable cost(s) to break contractual obligations with subcontractors, subconsultants, suppliers, vendors and materialmen entered prior to Company's receipt of the notice of termination.

The Company may request an Agreement termination by giving the Government a written notification, provided that such written notice is preceded by consultation between the Parties. The Company must provide a 30-day written notice to the Government.

Failure of the Parties to agree to terminate shall be resolved pursuant to Article 6, Disputes.

3.2.1 Extending the Term

The Parties may extend, by mutual written agreement, the term of this Agreement if opportunities within the scope set forth in the Agreement reasonably warrant. Any extension shall be formalized through modification of the Agreement by the AO and the Company and in accordance with procedures outlined in Article 4.2.

The Government shall exercise due diligence, reasonable promptness, and good-faith cooperation in performing all obligations under this Agreement. This includes, without limitation, the timely provision of all Government- furnished information, materials, approvals, access, decisions, and direction required for Company to perform the Work.

The Government shall not delay, hinder, or otherwise interfere with the Company's performance. Any failure by the Government to timely perform its obligations, or any Government-caused delay or disruption, may entitle Company to an equitable adjustment in schedule or other terms as necessary to account for the impact of such delay, which shall be modified in accordance with the procedures set forth in Article 4.2. The Government agrees to promptly address and resolve issues, dependencies, or approval requests submitted by Company to avoid material impacts to the Work.

Company shall not be held responsible for performance delays, nonperformance, or cost impacts arising from the Government's failure that directly impact the Company's ability to meet its obligations under this Agreement.

3.3 Termination for Cause:

The Government may, by written notice of default to the COMPANY, terminate this Agreement in whole or in part if the COMPANY:

(1) Fails to deliver the supplies or to perform the services within the time specified in this Agreement or any extension;
(2) Fails to make progress, so as to endanger performance of this Agreement; or
(3) Fails to perform any of the other provisions of this Agreement.

The Government's right to terminate this Agreement under subdivisions (a)(2) and (a)(3) above, may be exercised if the COMPANY does not cure such failure within 10 days (or longer if authorized in writing by the AO) after receipt of the notice from the AO specifying the failure.

If the Government terminates this Agreement in whole or in part, it may acquire, under the terms and in the manner the AO considers appropriate, supplies or services similar to those terminated, and the COMPANY shall be liable to the Government for any excess costs for those supplies and services. However, the COMPANY shall continue the work not terminated.

If, after termination, it is determined that the COMPANY was not in default, or that the default was excusable, the rights and obligations of the Parties shall be the same as if the termination had been issued for the convenience of the Government.

ARTICLE 4: MANAGEMENT, ADMINISTRATION, AND MODIFICATION

4.1 Administration

The AO is responsible for the review and approval of any recommendations to modify the TR, or other proposed changes to the terms and conditions of this Agreement. If additional terms and conditions are required to be included to address work that may be

required under this Agreement, they will be included by mutual written modification to this Agreement. Administrative and contractual matters under this Agreement shall be referred to the representatives identified in Agreement Administration.

The AO may designate an AOR to perform specific technical or administrative functions. The AOR has no authority to make any commitments or changes that affect price, quality, quantity, delivery, or other terms of the Agreement.

4.2 Modifications

The AO may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this Agreement in any one or more of the following:

(1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications;
(2) Method of shipment or packing; or
(3) Place of delivery.

If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this Agreement, whether or not changed by the order, the AO shall make an equitable adjustment in the Agreement price, the delivery schedule, or both, and shall modify the Agreement.

The COMPANY must assert its right to an adjustment within 30 days from the date of receipt of the written order. The AO may receive and act upon a proposal submitted before final payment of the Agreement.

Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the COMPANY from proceeding with the Agreement as changed.

Recommendations for modifications, including justifications to support any changes to the (technical requirements) TR and terms of this agreement may originate with either a request from the COMPANY to the AOR and AO, or the Government through the AO. This documentation will detail the technical, chronological, and financial impact of the proposed modification to the program. The AO and the COMPANY shall approve any Agreement modification. The Government is not obligated to pay for additional or revised pay activities until the CLIN Schedule is formally revised and made part of this Agreement via modification signed by the AO, and the project schedule is updated to incorporate pay activity changes resulting from the modification. If the AO designates an AOR, the COMPANY will receive a copy of the written designation. It will specify the extent of the AOR's authority to act on behalf of the AO.

The AO is responsible for the review and approval of any recommendations to modify the TR, or other proposed changes to the terms and conditions of this Agreement. If additional terms and conditions are required to be included to address work that may be required under this Agreement, they will be included by mutual written modification to this Agreement.

For minor or administrative Agreement modifications (e.g. changes in the paying office or appropriation data, changes to Government or the Company's personnel identified in the Agreement) no signature is required by the Company. Administrative modifications may be unilaterally executed by the AO provided that the COMPANY is notified of such modifications in writing (email accepted). All modifications except for administrative modifications shall be made by mutual written agreement of the parties.

The AO is responsible for initiating all modifications to this Agreement.

4.3 Changes

4.3.1 Change Order

(1) The Agreements Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the agreement, including changes-
   a. In the specifications (including drawings and designs);
   b. In the method or manner of performance of the work;
   c. In the Government-furnished property or services; or
   d. Directing acceleration in the performance of the work.

(2) Any other written order (which, as used in this paragraph (2), includes direction, instruction, interpretation, or determination) from the Agreements Officer that causes a change will be treated as a change order under this clause; Provided, that the Contractor gives the Agreements Officer written notice stating
   a. The date, circumstances, and source of the order; and
   b. That the Contractor regards the order as a change order.

(3) Except as provided in this clause, no order, statement, or conduct of the Agreements Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(4) If any change under this clause causes an increase or decrease in the Contractor’s cost of, or the time required for, the performance of any part of the

work under this agreement, whether or not changed by any such order, the Agreements Officer may make an equitable adjustment and modify the agreement in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (2) of this clause shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which the Government is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(5) The COMPANY must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (1) of this clause or (2) the furnishing of a written notice under paragraph (2) of this clause, by submitting to the Agreements Officer a written statement describing the general nature and amount of the proposal, unless this period is extended by the Government. The statement of proposal for adjustment may be included in the notice under paragraph (2) of this clause.

(6) No proposal by the COMPANY for an equitable adjustment shall be allowed if asserted after final payment under this agreement.

4.3.2 Changes and Changed Conditions

(1) The Agreements Officer may, in writing, order changes in the drawings and specifications within the general scope of the agreement.

(2) If changes under paragraph (1) increase or decrease the cost of, or time required for performing the work, the Agreements Officer may make an equitable adjustment (see paragraph (3)) upon submittal of a "proposal for adjustment" (hereafter referred to as proposal) by the COMPANY before final payment under the contract.

(3) The Agreements Officer will not make an equitable adjustment under paragraph (2) unless-

a. The COMPANY has submitted and the Agreements Officer has received the required written notice; or
b. The Agreements Officer waives the requirement for the written notice.

(4) Failure to agree to any adjustment shall be a dispute under the Disputes clause.

(5) No request by the COMPANY for an equitable adjustment to the agreement under this clause shall be allowed, unless the COMPANY has given the written notice required; provided, that the time prescribed in paragraph (1) of this clause for giving written notice may be extended by the Agreements Officer.

ARTICLE 5: OBLIGATION AND PAYMENT

5.1 Obligation of Funds

This Agreement is funded in accordance with the amount annotated in the award document. In no case shall the Government's financial obligations exceed the amount obligated on the Agreement, or as may be adjusted by amendment, change order, or change directive to this Agreement. The Government is not obligated to reimburse the COMPANY for expenditures in excess of the amount obligated by the Government. If a modification becomes necessary in performance of this Agreement, pursuant to Article 4, the AO and the COMPANY shall execute a revised CLIN Schedule and update the project schedule to reflect pay activity changes resulting from the modification.

5.2 Inspection and Acceptance

The Government has the right to inspect and test all supplies and services called for by the Agreement, to the extent practicable at all times and places during the term of the Agreement. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

If any of the supplies or services do not conform with Agreement requirements, the Government may require the COMPANY to replace the supplies or perform the services again in conformity with Agreement requirements, at no increase in amount. When the supplies or services are for correction, the COMPANY shall be liable for all transportation costs.

If the COMPANY fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with Agreement requirements, the Government may (1) by contract or otherwise, perform the services or replace the supplies and charge to the COMPANY any cost incurred by the Government that is directly related to the performance of such service or replacement; or (2) terminate the Agreement for cause.

Acceptance shall be conclusive, except for latent defects, fraud, or gross mistakes amounting to fraud.

5.3 Payments

5.3.1 The Government shall pay the COMPANY, upon the submission of proper invoices, the prices stipulated in this Agreement for supplies delivered and accepted or services rendered and accepted. Payment will be made in accordance with the Prompt Payment Act. Invoices shall be submitted electronically through the designated Government system (e.g., Wide Area WorkFlow (WAWF)).

5.3.2 The Government will make payment under this contract by electronic funds transfer (EFT). Payments will be made by the Defense Finance Accounting Service (DFAS) within 30 calendar days of an accepted invoice in PIEE. Refer to this agreement for further details how to submit and process invoices through PIEE. The COMPANY shall be registered and maintain active registration in the System for Award Management (SAM) at https://www.sam.gov to receive EFT payments.

5.3.3 The COMPANY shall maintain adequate records to account for all obligated funding under this Agreement.

5.3.4 Unenforceability of Unauthorized Obligations: All supplies or services provided under this Agreement must be ordered and funded, in writing, by the Agreements Officer. The Government will not be bound by any supplies or services that were not ordered and funded in accordance with this article.

5.3.5 Limitation of Government Obligation: In no case shall the Government's financial liability exceed the amount(s) obligated under this Agreement.

5.4 Financial Records and Reports:

The COMPANY shall maintain adequate records to account for Federal funds received under this Agreement and shall maintain adequate records to account for COMPANY Project Agreement funding provided under this Agreement.

ARTICLE 6: DISPUTES

6.1 General

The Parties shall communicate with one another in good faith and in a timely and cooperative manner when raising issues pertaining to this Agreement under this article, with the objective of resolving any misunderstanding, disagreement, claims, or disputes by mutual agreement.

6.2 Dispute Resolution Procedures

Any disagreement, claim or dispute between the Government and the COMPANY concerning questions of fact or law arising from or in connection with this Agreement,

and, whether or not involving an alleged breach of this Agreement, may be raised only under this Article.

Whenever disputes, disagreements, or misunderstandings arise, the Parties shall attempt to resolve the issue(s) involved by discussion and mutual agreement as soon as practicable, with the goal of settlement within three months of identification of the issue. Every reasonable attempt will be made to resolve all issues at the AO's level. Alternative Dispute Resolution (ADR) procedures to include, but not limited to settlement negotiations, mediation and fact-finding, will be used to the maximum extent practicable. Whenever the COMPANY submits, in writing, a claim or issue to the Government, the AO shall consider the claim or issue and, within 60 calendar days of receipt of the claim or issue in dispute, either:

(1) Prepare and transmit a written decision to the COMPANY, which shall include the basis for the decision, and accordingly document the Agreement file or;
(2) Notify the COMPANY of a specific date when the AO will render a decision if more time is needed for response. The notice will inform the COMPANY of the reason for delaying the decision.

In the event the COMPANY decides to appeal the decision, the AO shall make every effort to encourage the COMPANY to enter into ADR procedures with the AO. The ADR procedure applicable to this Agreement expressed in subparagraphs below:

(1) Failing resolution by mutual agreement, the aggrieved Party shall document the dispute, disagreement, or misunderstanding by notifying the other Party through the cognizant AO in writing documenting the relevant facts, identifying unresolved issues, specifying the clarification or remedy sought, and documenting the rationale as to why the clarification/remedy is appropriate. Within 10 working days after providing notice to the other Party, the aggrieved Party may, in writing, request a decision by the Senior Contracting Official (SCO), MICC. The other Party shall submit a written position on the matter(s) in dispute within 30 calendar days after being notified that a decision has been requested. The SCO will conduct a review of the matter(s) in dispute and render a decision in writing within 30 calendar days of receipt of such a position. Any such decision is final and binding, unless a Party shall, within 30 calendar days request further review as provided by this article. If requested within 30 calendar days of the decision by SCO, further review will be conducted by the President of the COMPANY and the MICC SCO. In the event of a decision, or in absence of a decision within 60 calendar days of referral to the President of the COMPANY and the MICC SCO (or such other period as agreed to

by the parties), either party may pursue any right or remedy provided by law. Alternatively, the parties may agree to explore and establish an ADR procedure to resolve this dispute.

6.3 Limitation of Damages

No Party shall be liable to any other Party for consequential, punitive, special and incidental damages or other indirect damages, whether arising in Agreement (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.

6.4 Claim

In the event of a Claim arising under this Agreement, the COMPANY shall submit it in writing to the AO for a final decision. For any Claim exceeding $100,000, it must be certified that:

(1) The claim is made in good faith;
(2) The supporting data are accurate and complete to the best of the COMPANY's knowledge and belief;
(3) The amount requested accurately reflects the adjustment for which the COMPANY believes the Government is liable; and (d) the certifier is authorized to certify the claim on behalf of the COMPANY.

The AO shall, within 60 days of receipt of the claim, issue a written final decision. The decision shall be in writing and shall furnish the COMPANY a copy. The decision shall include a statement of facts, a reference to the pertinent Agreement provisions, state the reasons for the decision, and shall inform the COMPANY of its appeal rights. This decision shall be final and binding unless the COMPANY appeals the decision to the U.S. Court of Federal Claims within 12 months.

6.5 Protest after Award

If the COMPANY receives notice of a protest filed with the Government Accountability Office (GAO), the U.S. Court of Federal Claims, or a protest filed with the agency, the COMPANY shall immediately suspend performance or terminate the protested award, unless continued performance is justified, in writing, for urgent and compelling reasons or is determined to be in the best interest of the Government.

The COMPANY shall proceed diligently with the performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the AO.

ARTICLE 7: CONFIDENTIAL INFORMATION

7.1 Exchange of Information

The Government may from time to time disclose Government Confidential Information to the COMPANY and its subcontractors or suppliers, in connection with a particular project, and the COMPANY and its subcontractors or suppliers, may from time to time disclose information that is Trade Secret or Confidential Information to the Government in connection with the OTA or performance thereunder. Neither the Government nor COMPANY or their subcontractors or suppliers shall be obligated to transfer Confidential Information or Trade Secrets independently developed by the Government or the COMPANY or their subcontractors or suppliers, absent an express written agreement between the Parties providing the terms and conditions for such disclosure.

7.2 Confidentiality and Authorized Disclosure:

The Receiving Party agrees, to the extent permitted by law, that Confidential Information and Trade Secrets shall remain the property of the Disclosing Party (no one shall disclose unless they have the right to do so), and that, unless otherwise agreed to by the Disclosing Party, Confidential Information and Trade Secrets shall not be disclosed, divulged, or otherwise communicated by it to third parties or used by it for any purposes other than in connection with specified project efforts, except to the extent that such information must be communicated (a) to subcontractors, vendors, consultants, and other third parties in connection with the performance of this Agreement; (b) as required by governmental agencies or otherwise required by law; (c) as required for financial, insurance or tax audits, subject to a confidentiality agreement with the auditor; or (d) as may be authorized in writing by the party from whom that information originated; provided that the duty to protect such "Confidential Information" and "Trade Secrets" 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 per Article entitled "Confidential Information" herein,

(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 Information or Trade Secrets as evidenced by written records, and

(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.

7.3 Return of Proprietary Information

Upon the request of COMPANY, the Government shall promptly return all copies and other tangible manifestations of the Confidential Information or Trade Secrets disclosed but may keep one copy for audit and business records purposes, provided such retained copies must be held in a secure, non-production, and non-active archival system and shall not be readily accessible by or used by the Government's operational personnel. Upon request by the Government, COMPANY shall promptly return all copies and other tangible manifestations of the Confidential Information disclosed by the Government but may keep one copy for legal, regulatory and audit archival purposes provided such retained copies must be held in a secure, non-production, and non-active archival system and shall not be readily accessible by or used by the COMPANY's operational personnel. As used in this section, tangible manifestations include human readable media as well as magnetic and digital storage media.

7.4 Term

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

Each Party agrees to use the Confidential Information of the other solely for the purposes of this Agreement and shall protect such information from unauthorized use and disclosure by using, at a minimum, a reasonable degree of care. Confidential Information shall be marked with a restrictive legend.

7.5 Subcontracts

The Government and the COMPANY shall flow down the requirements of this Article to their respective personnel, agents, partners, and team members receiving such Confidential Information or Trade Secrets under this OTA.

ARTICLE 8: DATA RIGHTS

8.1 Rights in Data – General

The term “Data,” as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

The COMPANY shall not, without the prior written permission of the AO, assert copyright in any data first produced in the performance of this contract.

8.2 Allocation of Principal Rights

Data that will be delivered, furnished, or otherwise provided to the Government under this Agreement, in which the Government has previously obtained rights, shall be delivered, furnished, or provided with the pre- existing rights, unless (a) the parties have agreed otherwise, or (b) any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

8.3 Marking of Data

Any Data delivered under this Agreement shall be marked with the following legend:

"This data is being delivered as Technical Data, as defined in Agreement [INSERT AGREEMENT NUMBER]. Use, duplication, or disclosure is subject to the restrictions as stated in Agreement [INSERT AGREEMENT NUMBER] between the COMPANY and the Government."

8.4 Unmarked COMPANY Data

Data delivered to the Government without any restrictive markings shall be deemed to have been furnished with unlimited rights. The Government is not liable for the disclosure, use, or reproduction of such data. If the COMPANY learns of a release to the Government of its unmarked Data that should have contained a restricted legend, the COMPANY will have the opportunity to cure such omission going forward by providing written notice to the AO within six months of the erroneous release.

8.5 Prior Technology

In the event it is necessary for the COMPANY to furnish the Government with Data which existed prior to, or was produced outside of this Agreement, and such Data embodies trade secrets or comprises commercial or financial information which is

privileged or confidential, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used by the Government and such Government Contractors or contract employees that the Government may hire on a temporary or periodic basis only for the purpose of carrying out the Government's responsibilities under this Agreement. Data protection will include proprietary markings and handling, and the signing of nondisclosure agreements by such Government Contractors or contract employees.

The COMPANY shall not be obligated to provide Data that existed prior to, or was developed outside of this Agreement to the Government. Upon completion of activities under this Agreement, such Data will be disposed of as requested by the COMPANY.

The COMPANY is required to provide full schematics, parts list, and operations manual as part of this agreement. The Government will operate within the Data disclosure parameters discussed above.

8.6 Oral and Visual Information:

If information which the COMPANY considers to embody trade secrets or to comprise commercial or financial information which is privileged or confidential is expressly disclosed orally or visually directly to the Government, the exchange of such information must be memorialized in tangible, recorded form and marked with a suitable notice or legend, and furnished to the Government within 30 calendar days after such oral or visual disclosure, or the Government shall have no duty to limit or restrict, and shall not incur any liability for any disclosure and use of such information. If the Government reasonably determines that the memorialization of the exchange is insufficiently detailed to enable it to identify the privileged or confidential information, COMPANY shall provide additional detail at the Government's request, subject to restrictions on use and disclosure.

8.7 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 not identified with a suitable notice or legend as set forth in this Article; nor

(2) Information contained in any Data for which disclosure and use is restricted, if such information is or becomes generally known without breach of the above, is properly known to the Government or is generated by the Government independent of carrying out responsibilities under this Agreement, is rightfully received from a third party without restriction, or is

included in Data which the COMPANY has furnished, or is required to furnish to the Government without restriction on disclosure and use.

8.8 Copyright

No copyrighted materials are expected to be developed under this Agreement. In the event copyrighted materials are developed under this Agreement, the COMPANY hereby grants to the U.S. Government a non-exclusive, non-transferable, royalty-free, fully paid-up license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly any copyrighted materials developed (excluding Data) under this Agreement to which it owns the copyright, and to authorize others to do so. Jointly Created Works: Ownership to copyrights for original works of authorship created jointly by a Government employee and a Vendor employee in the course of performance of work under this Agreement is vested in the Vendor. The Vendor grants to the Government a royalty free, nonexclusive, irrevocable license in accordance with the Data Rights provisions of the FPR.

8.9 Lower Tier Agreements

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

8.10 Patents

8.10.1 Authorization and Consent.

The Government authorizes and consents to all use and manufacture, in performing this agreement or any subagreement at any tier, of any invention described in and covered by a United States patent-

(1) Embodied in the structure or composition of any article the delivery of which is accepted by the Government under this agreement; or

(2) Used in machinery, tools, or methods whose use necessarily results from compliance by the Company or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Agreement Officer directing the manner of performance. The entire liability to the Government for infringement of a United States patent shall be determined solely by the provisions of the indemnity clause, if any, included in this agreement or any subagreement hereunder (including any lower-tier subagreement), and the Government assumes liability for all other infringement to the extent of the authorization and consent herein above granted.

(3) The Company shall include the substance of this in all subagreements.

8.10.2 Notice and Assistance Regarding Patent and Copyright Infringement.

(1) The Company shall report to the Agreement Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this agreement of which the Company has knowledge.

(2) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Company shall furnish to the Government, when requested by the Agreement Officer, all evidence and information in the Company's possession pertaining to such claim or suit. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(3) The Company shall include the substance of this in all subagreements.

8.10.3 Patent Indemnity

(1) The Company shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.

(2) This indemnity shall not apply unless the Company shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to-

a. An infringement resulting from compliance with specific written instructions of the Agreement Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Company;

b. An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance; or

c. A claimed infringement that is unreasonably settled without the consent of the Company, unless required by final decree of a court of competent jurisdiction.

8.10.4 Patent Rights-Ownership by the Company

(1) As used in this clause

a. *Invention* means any invention or discovery that is or may be patentable or otherwise protectable under title 35 of the U.S. Code, or any variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.)

b. *Made* means-

i. When used in relation to any invention other than a plant variety, the conception or first actual reduction to practice of the invention; or

ii. When used in relation to a plant variety, that the Contractor has at least tentatively determined that the variety has been reproduced with recognized characteristics.

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

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 being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

Subject invention means any invention of the Company made in the performance of work under this agreement.

(2) Company's rights.

a. Ownership. The Company may retain ownership of each subject invention throughout the world in accordance with this clause.

b. License. The Company shall retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, unless the Company fails to disclose the invention within the times specified in paragraph (c) of this clause. The Company's license extends to any domestic subsidiaries and affiliates within the corporate structure of which the Company is a part, and includes the right to grant sublicenses to the extent the Company was legally obligated to do so at contract award. The license is transferable only with the written approval of the agency, except when

transferred to the successor of that part of the Company's business to which the invention pertains. The Company's license may be revoked or modified by the agency to the extent necessary to achieve expeditious practical application of the subject invention in a particular country.

(3) Company's obligations.

a. The Company shall disclose in writing each subject invention to the Agreement Officer within 2 months after the inventor discloses it in writing to Company personnel responsible for patent matters. The disclosure shall identify the inventor(s) and this contract under which the subject invention was made. It shall be sufficiently complete in technical detail to convey a clear understanding of the subject invention. The disclosure shall also identify any publication, on sale (i.e., sale or offer for sale), or public use of the subject invention, or whether a manuscript describing the subject invention has been submitted for publication and, if so, whether it has been accepted for publication. In addition, after disclosure to the agency, the Company shall promptly notify the Agreement Officer of the acceptance of any manuscript describing the subject invention for publication and any on sale or public use.

b. The Company shall elect in writing whether or not to retain ownership of any subject invention by notifying the Agreement Officer within 2 years of disclosure to the agency. However, in any case where publication, on sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

c. The Company shall file either a provisional or a nonprovisional patent application or a Plant Variety Protection Application on an elected subject invention within 1 year after election. However, in any case where a publication, on sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the Company shall file the application prior to the end of that statutory period. If the Company files a provisional application, it shall file a nonprovisional application within 10 months of the filing of the provisional application. The Company shall file patent applications in additional countries or international patent offices within either 10 months of the first filed patent application (whether provisional or nonprovisional) or 6 months from the date permission is granted by the Commissioner of Patents to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

d. The Company may request extensions of time for disclosure, election, or filing under paragraphs (c)(1), (c)(2), and (c)(3) of this clause.

(4) Government's rights-

a. Ownership. The Company shall assign to the agency, on written request, title to any subject invention-

i. If the Company fails to disclose or elect ownership to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain ownership; provided, that the agency may request title only within 60 days after learning of the Company's failure to disclose or elect within the specified times.

ii. In those countries in which the Company fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Company has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the agency, the Company shall continue to retain ownership in that country.

iii. In any country in which the Company decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

b. License. If the Company retains ownership of any subject invention, the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on its behalf, the subject invention throughout the world.

(5) Company action to protect the Government's interest.

a. The Company shall execute or have executed and promptly deliver to the agency all instruments necessary to-

i. Establish or confirm the rights the Government has throughout the world in those subject inventions in which the Company elects to retain ownership; and

ii. Assign title to the agency when requested under paragraph (d) of this clause and to enable the Government to obtain patent protection and plant variety protection for that subject invention in any country.

b. The Company shall require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in

the Company's format, each subject invention in order that the Company can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. The disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this clause. The Company shall instruct such employees, through employee agreements or other suitable educational programs, as to the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

c. The Company shall notify the Agreement Officer of any decisions not to file a nonprovisional patent application, 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 30 days before the expiration of the response or filing period required by the relevant patent office.

d. The Company shall include, within the specification of any United States nonprovisional patent or plant variety protection application and any patent or plant variety protection certificate issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under (identify the agreement) awarded by (identify the agency). The Government has certain rights in the invention."

(6) Reporting on utilization of subject inventions. The Company shall submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining utilization of the subject invention that are being made by the Company or its licensees or assignees. The reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Company, and other data and information as the agency may reasonably specify. The Company also shall provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (h) of this clause. The Company also shall mark any utilization report as confidential/proprietary to help prevent inadvertent release outside the Government. As required by 35 U.S.C. 202(c)(5), the agency will not disclose that information to persons outside the Government without the Company's permission.

(7) Preference for United States industry. Notwithstanding any other provision of this clause, neither the Company nor any assignee shall grant to any person the exclusive right to use or sell any subject invention in the United States unless the person agrees that any products embodying the subject invention or produced

through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for an agreement may be waived by the agency upon a showing by the Company or its assignee 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.

(8) March-in rights. The Company acknowledges that, with respect to any subject invention in which it has retained ownership, the agency has the right to require licensing pursuant to 35 U.S.C. 203 and 210(c), and in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency in effect on the date of agreement award.

(9) Special provisions for agreements with nonprofit organizations. If the Company is a nonprofit organization, it shall-

a. Not assign rights to a subject invention in the United States without the written approval of the agency, except where an assignment is made to an organization that has as one of its primary functions the management of inventions, provided, that the assignee shall be subject to the same provisions as the Company;

b. Share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (but through their agency if the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

c. Use the balance of any royalties or income earned by the Company with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions for the support of scientific research or education; and

d. Make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business concerns, and give a preference to a small business concern when licensing a subject invention if the Company determines that the small business concern has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business concerns; provided, that the Company is also satisfied that the small business concern has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Company.

e. Allow the Secretary of Commerce to review the Company's licensing program and decisions regarding small business applicants, and negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary's review discloses that the Company could take reasonable steps to more effectively implement the requirements of paragraph (i)(4) of this clause.

(10) Subagreements.

a. The Company shall include the substance of this clause, including this paragraph (j), in all subagreements for experimental, developmental, or research work to be performed by a small business concern or nonprofit organization.

b. The Company shall include in all other subagreements for experimental, developmental, or research work the substance of the patent rights.

c. At all tiers, the patent rights clause must be modified to identify the parties as follows: references to the Government are not changed, and the subCompany has all rights and obligations of the Company in the clause. The Company shall not, as part of the consideration for awarding the subagreement, obtain rights in the subCompany's subject inventions.

8.11 Joint Subject Inventions

Title to a Subject Invention made jointly by a Government employee and a Vendor employee - shall be held jointly by the Government and the Vendor. The Vendor shall have the initial option to file a patent application on a joint subject invention at its own expense. If the Vendor declines to file or complete prosecution of a patent application, the Vendor waives co-ownership interest and agrees to assign its title to the joint subject invention to the Government.

8.12 Survival Rights

Provisions of this Article shall survive termination of this Agreement.

8.13 Limited Rights Notice:

(1) These data are submitted with limited rights under Government Agreement No. [Insert Agreement Number]. These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Contractor, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes, if any; provided that the Government makes such disclosure subject to prohibition against further use and disclosure: .The COMPANY does not want to manufacture or produce a Caisson Wagon;

(2) The COMPANY is no longer in business;

(3) The COMPANY no longer produces Caisson Wagons or similar products;
(4) The COMPANY cannot be reached after reasonable attempts by the Government to contact the COMPANY to discuss procuring Caisson Wagons;
(5) The COMPANY and the Government cannot reach an agreement or contract to purchase a Caisson Wagon despite a good faith negotiation; or
(6) More than 10 years has passed since the agreement was signed.

This notice shall be marked on any reproduction of these data, in whole or in part.

ARTICLE 9: OPERATIONAL SECURITY (OPSEC)

9.1 Antiterrorism/Operations Security

The COMPANY shall maintain an OPSEC program to identify and protect critical information and sensitive activities associated with this Agreement, consistent with U.S. Army security regulations.

Access and general protection/security policy and procedures. This standard language is for Company employees with an area of performance within Army-controlled installation, facility, or area. Company and all associated sub-contractors employees 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. Company workforce must comply with all personal identity verification requirements as directed by DoD, HQDA and/or local policy. In addition to the changes otherwise authorized, should the Force Protection Condition (FPCON) or Health Protection Condition (HPCON) at any individual facility or installation change, the Government may require changes in Company security matters or processes.

For Companies that do not require CAC, but require access to a DoD facility or installation. Vendor 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 (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.

Locally Developed iWATCH Army Training. The Company and all associated sub-contractors shall brief all employees on the local iWATCH Army 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 COR. This training shall be completed within 7 calendar days of Notice to Proceed and within 7 calendar days of new employees commencing performance with the results reported to the COR NLT 7 calendar days after Notice to Proceed.

For agreements that require OPSEC Training. Per AR 530-1, Operations Security, the vendor employees must complete Level I OPSEC Awareness training. New employees must be trained within 7 calendar days of their reporting for duty and annually thereafter.

ARTICLE 10: GOVERNING LAW AND JURISDICTION

This Agreement shall be construed and enforced in accordance with the laws of the United States in a Federal Court with competent jurisdiction. Any dispute arising under this Agreement shall first be handled in accordance with Article 6: Disputes of this Agreement.

ARTICLE 11: TITLE AND DISPOSITION OF PROPERTY

The Government will not take title to COMPANY acquired or produced property, except property the agreement identifies as deliverable property, unless the parties agree otherwise. Title to all other property shall remain with the COMPANY. The COMPANY shall be responsible for the maintenance, repair, protection, and preservation of all such property at its own expense.

Any Government-Furnished Property (GFP) shall be administered consistent with federal property management principles. Title to all GFP shall remain with the Government.

The COMPANY shall have a system of internal controls to manage, use, preserve, protect, repair, and maintain GFP in its possession. The COMPANY shall be liable for any loss, damage, destruction, or theft of GFP.

Title to all supplies and end items shall pass to the Government upon the moment of formal Acceptance by an authorized Government representative.

ARTICLE 12: SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING

The COMPANY shall provide "adequate security" on all covered contractor information systems. This requires, at a minimum, implementation of all security controls described in the National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, and the mandatory reporting of Cyber Incidents to the designated DoD portal at https://dibnet.dod.mil within 72 hours of discovery.

ARTICLE 13: STATUTORY AUTHORITY

This Agreement is not a Federal procurement contract, grant or cooperative agreement. Nothing in this Agreement or its attachments will be construed as incorporating by reference or implication any provision of Federal acquisition law or regulation not specifically mentioned in this Agreement. This Agreement is subject to the compliance requirements of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. (S) 2000d) relating to nondiscrimination in Federally assisted programs. By executing this Agreement, the COMPANY has signed an Assurance of Compliance with the nondiscriminatory provisions of the Act. Additionally, this Agreement is subject to the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. chapter 78), Executive Order 13627, Strengthening Protections Against Trafficking in Persons in Federal Contracts, the international Traffic in Arms Regulations (22 C.F.R. Part 120, et seq.), the National Industrial Security Program Operating Manual (NISPOM) (DoD 5220.22-M), the Department of Commerce's Export Administration Regulations (15 C.F.R. Part 730, et seq.), and the Federal Property and Administrative Services Act (40 U.S.C. chapter 5), to the extent applicable to the activities to be conducted under this Agreement. In addition, the Procurement integrity Act (41 U.S.C. (S)2101-2107) shall apply to this Agreement.

ARTICLE 14: INDEMNITY

14.1 The COMPANY shall defend, indemnify and hold the Government harmless (including payment of all reasonable costs, attorneys' fees, settlements and damages) from any actions brought against Government to the extent that it is based on a claim that the Products or Documentation infringe any U.S. registered copyright of any third party, provided that: (i) the COMPANY is promptly notified in writing of the claim; (ii) the COMPANY has sole control of the investigation, preparation, defense, and/or settlement of such claim, and the Government does not settle such claim without the COMPANY's consent; and (iii) at the COMPANY's request and expense, Government provides reasonable assistance and information to the COMPANY. Nothing contained herein shall be deemed to contradict or contravene the authority of the Department of Justice as per 28 USC (S)516.

14.2 In the event of any such infringement claim, the COMPANY may at its sole option:

(1) replace the infringing Products with functionally equivalent product;
(2) modify such Products to render the same non-infringing functionality, while retaining substantively equivalent functionality; or
(3) procure for the Government a license to continue to use such Products under the terms of this Agreement.

14.3 Notwithstanding the foregoing, the COMPANY will have no liability with respect to any claim that arises from any such infringement claim to the extent that it results from: (i) use, operation, or combination of the Products or Documentation with programs, data, equipment, or materials not provided by the COMPANY if such infringement would have been avoided by the use of the Products or Documentation without such other programs, data, equipment, or materials; (ii) modifications to the Products made by a party other than COMPANY or its agents; (iii) data accessed or generated by the Products (including, without limitation Third Party Materials); (iv) the combination, operation or use of the Products with equipment, devices, data or software not provided or approved by COMPANY; (v) the Government's failure to use updated or modified versions of the Products provided by COMPANY to avoid a claim; (vi) COMPANY's compliance with any specifications or requirements provided by Government; or (vii) the Government's use of the Products other than in accordance with this Agreement.

14.4 This article specified the Government's sole and exclusive remedy and the COMPANY'S sole and exclusive obligation with respect to the infringement of intellectual property rights.

14.5 The Government shall not indemnify any entity. The Government agrees to pay for any loss, liability or expense, which arises out of or relates to the Government's acts or omissions with respect to its obligations hereunder, where a final determination of liability on the part of the Government is established by a court of law, or where settlement has been agreed to by the Government agency with, where appropriate, the coordination of the Department of Justice. This provision shall not be construed to limit the Government's rights, claims or defenses which arise as a matter of law or pursuant to any other provision of this Agreement.

ARTICLE 15: ASSIGNMENT AND TRANSFER

Neither Party may assign, reassign, or transfer such Party's rights and obligations under this Agreement without the prior written consent of the other Party, provided that (1) the Government may delegate or transfer its administrative authority over this Agreement to a different AO within the U.S. Department of War, and (2) nothing herein shall be construed to preclude Company from assigning proceeds under this Agreement in accordance with the Assignment of Claims Act. Any assignment, reassignment or transfer is subject to payment of then- current license and support fees, as applicable for the number of Applications required by such assignee or transferee.

15.1 Assignment of Claims Act

The Company, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 6305 (hereafter referred to as “the Act”), may assign its rights to be paid amounts due or to become due as a result of the performance of this Agreement to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

Any assignment or reassignment authorized under the Act and this Article shall cover all unpaid amounts payable under this Agreement, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this Agreement.

The Company shall not furnish or disclose to any assignee under this Agreement any classified document (including this Agreement) or information related to work under this Agreement until the AO authorizes such action in writing.

ARTICLE 16: FORCE MAJEURE

During these events, neither action nor inaction will be considered a breach of this Agreement. Neither Party shall have liability in the performance of its work and services if the same shall arise from any cause or causes beyond the control of Party, 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; unusually severe weather, flood; earthquake; accident; war; rebellion; insurrection; riot; pandemic; epidemic; public health crisis; lock-out; labor dispute; boycott; embargoes; blockades; terrorism; hostilities; change in law; and invasion ("Force Majeure Event") 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 cause. If any of COMPANY's services or work are affected by an event resulting from a Force Majeure Event, COMPANY shall be entitled to an equitable adjustment in time and schedule to complete the work or services to be negotiated and agreed upon by the parties based on the damages caused by the Force Majeure event. Only schedule relief will be provided and no additional funding will be paid for idle resources unless specifically negotiated.

ARTICLE 17: ORDER OF PRECEDENCE

In case of a conflict or inconsistency between this Agreement and attachments, the following order of precedence will govern, with lower numbers governing over higher ones:

(1) This Agreement;
(2) Representations and other instructions;
(3) Agreement documents, exhibits, and attachments;
(4) The specifications.

No TR or other attachment incorporated into this Agreement after execution of this main body will be construed to amend this agreement or any earlier attachment unless it specifically states its intent to do so and cites the section or sections amended.

ARTICLE 18: PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

18.1 Definitions. As used in this article—

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 War, 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.

18.2 Prohibition

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, 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. The Company 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 an exception at paragraph (c) of this article applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, 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 (c) of this article applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

18.3 Exceptions. This article does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) 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.

18.4 Reporting requirement

(1) In the event the Company 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 Company is notified of such by a subcontractor at any tier or by any other source, the Company shall report the information in paragraph (d)(2) of this article to the AO, unless elsewhere in this agreement are established procedures for reporting the information; in the case of the Department of Defense, the Company shall report to the website at https://dibnet.dod.mil. For indefinite delivery contracts, the Company shall report to the AO for the indefinite delivery contract and the

AO(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at https://dibnet.dod.mil.

(2) The Company shall report the following information pursuant to paragraph (d)(1) of this article:

i. Within one business day from the date of such identification or notification: The contract 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 (d)(2)(i) of this article: Any further available information about mitigation actions undertaken or recommended. In addition, the Company 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.

18.5 Subcontracts

The Company shall insert the substance of this article, including paragraph (18.5) and excluding paragraph (18.2)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

ARTICLE 19: WARRANTY

19.1 The COMPANY warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this Agreement. The warranty period shall be [Insert Warranty Period, e.g., one year] from the date of acceptance of the supplies or performance of the services.

19.2 No Waiver of Rights for Damages Neither the Government's review, approval or acceptance of, nor payment for, the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement. The Company shall be and remain liable to the Government in accordance with applicable law

for all damages to the Government caused by the Company's negligent performance of any of these services furnished under this Agreement.

19.3 Rights and Remedies

The rights and remedies of the Government provided for under this Agreement are in addition to any other rights and remedies provided by law.

ARTICLE 20: RESERVED

ARTICLE 21: BUY AMERICAN ACT

21.1 Buy American

The COMPANY shall deliver only domestic end products, meaning end products manufactured in the U.S. where the cost of domestic components exceeds the statutory percentage threshold, unless an exception applies and has been approved in writing by the AO.

21.2 Berry Amendment

The COMPANY shall deliver only end items and components thereof that are grown, reprocessed, reused, or produced in the United States in accordance with 10 U.S.C. § 4862 and 10 U.S.C. § 4863. Covered items include, but are not limited to: food; clothing and individual equipment; tents and covers; specialty metals (including stainless steel flatware); and any products containing natural fibers, wool, or synthetic fabrics. The COMPANY must ensure that all processing—from the raw material, fiber, or yarn level through final assembly—occurs domestically. The COMPANY shall flow down the requirements of this clause to all subcontractors and suppliers providing covered items.

21.3 Restrictions on Certain Foreign Purchases

(1) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Company shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(2) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at https://home.treasury.gov/policy-

issues/financial-sanctions/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at https://home.treasury.gov/policy- issues/office-of-foreign-assets-control-sanctions-programs-and-information.

(3) The Company shall insert this article, including this paragraph (c), in all subcontracts.

ARTICLE 22: CONTRACTOR CONDUCT AND INTEGRITY

22.1 Gratuities

The Government may terminate this Agreement if it is found that gratuities were offered or given by the COMPANY to any officer or employee of the Government with a view toward securing a contract or favorable treatment.

22.2 Anti-Kickback Procedures

The Anti-Kickback Act of 1986 prohibits providing or soliciting any kickback. The COMPANY shall have in place and follow reasonable procedures designed to prevent and detect violations of the Act.

22.3 Contractor Code of Business Ethics and Conduct

The COMPANY shall have a written code of business ethics and conduct, an ongoing business ethics awareness and compliance program, and shall timely disclose to the agency Office of the Inspector General credible evidence of a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations, or a violation of the civil False Claims Act.

22.4 Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment

The COMPANY shall not enter into any subcontract in excess of the simplified acquisition threshold with a contractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

ARTICLE 23: LABOR AND EMPLOYMENT PROVISIONS

23.1 Equal Opportunity

The COMPANY shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The COMPANY will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin.

23.2 Service Contract Labor Standards

23.3 Combating Trafficking in Persons

The United States Government has a zero-tolerance policy regarding trafficking in persons. The COMPANY, its employees, and its subcontractors shall not

(1) Engage in severe forms of trafficking in persons during the period of performance of the contract;
(2) Procure commercial sex acts; or
(3) Use forced labor.

23.4 Equal Opportunity for Veterans

The COMPANY shall not discriminate against any employee or applicant for employment because he or she is a disabled veteran, recently separated veteran, other protected veteran, or Armed Forces service medal veteran.

23.5 Equal Opportunity for Workers with Disabilities

The COMPANY shall not discriminate against any employee or applicant for employment because of physical or mental disability.

ARTICLE 24: SUBCONTRACTING

24.1 Subcontracts for Commercial Items: The COMPANY shall require its subcontractors to comply with the terms of all mandatory clauses in this Agreement, where applicable. No subcontract placed under this Agreement shall provide for payment on a cost-plus-a-percentage-of-cost basis.

24.2 The Government and the COMPANY shall flow down the requirements of this Article to their respective personnel, agents, partners, and team members receiving such Confidential Information or Trade Secrets under this OTA.

ARTICLE 25: MISCELLANEOUS

25.1 Entire Agreement

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.

25.2 Severability

To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any article of this Agreement invalid or otherwise unenforceable in any respect. If a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.

25.3 Headings

The headings appearing at the beginning of the sections contained in this Agreement have been inserted for identification and reference purposes only and shall not be used in the construction and interpretation of this Agreement.

25.4 Counterparts

This Agreement, or modifications thereto, may be executed in counterparts each of which shall be deemed as original, but all of which taken together shall constitute one and the same instrument.

25.5 Defense Priorities and Allocations System (DPAS)

This is a rated order certified for national defense use, and you are required to follow all the provisions of the Defense Priorities and Allocations System regulation (15 CFR part 700).

25.6 Public Release of Information

The Company may publicly disclose information regarding the work performed under this Agreement, including general descriptions of the project and results, provided that such disclosure does not include classified information, controlled unclassified information (CUI), export-controlled information, or any other information whose release is restricted by applicable law, regulation, or written direction of the Agreements Officer.

Nothing in this Article restricts the Company from disclosing information that is already lawfully in the public domain, that is solely the Company's data and not subject to Government-imposed restrictions, or that is required to be disclosed by law or regulation.

The Company shall provide written notice of a plan to publicly release information to the Agreements Officer five (5) business days before planned disclosure and must wait for the AO's determination on whether the information is public information before releasing information that has not previously been reviewed by the U.S. Government.

25.7 Notices

All notices shall be in writing and delivered to the administrative Points of Contact identified herein.

25.8 Assignment

The COMPANY shall not assign this Agreement, or any claims or interest therein, without the prior written consent of the AO.

25.9 Excusable Delays

The COMPANY shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the COMPANY and without its fault or negligence, such as acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and freight embargoes.

ARTICLE 26: AGREEMENT ADMINISTRATION AND POINTS OF CONTACTS

Government Points of Contact:

1. Agreements Officer (AO):
    a. Name: Jennifer Hastedt
    b. Organization/Address:
       MICC-Theater Support Center
       2219 Infantry Post Road
       JBSA-Fort Sam Houston 78234
    c. Email: Jennifer.L.Hastedt2@army.mil
    d. Phone: 520-944-7122
2. Agreements Officer's Representative (AOR):
    a. Name: [Insert Name]
    b. Organization/Address: [Insert Organization/Address]
    c. Email: [Insert Email]
    d. Phone: [Insert Phone]

COMPANY Points of Contact:

1. Program Manager:
    a. Name: [Insert Name]
    b. Title: [Insert Title]

c. Email: [Insert Email]

d. Phone: [Insert Phone]

2. Contracts Manager:

a. Name: [Insert Name]

b. Title: [Insert Title]

c. Email: [Insert Email]

d. Phone: [Insert Phone]

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives with Signatory Authority.

FOR [Insert Contractor Legal Name]:

(Signature)
[Name of Authorized Representative]
[Title]
Date: _____

FOR THE U.S. GOVERNMENT:

(Signature)
Jennifer L. Hastedt
Agreements Officer
Date: _____