

## **Contract Flowdown Clauses**

### **Ordnance Technology Initiative W15QKN-14-9-1001 / DOTC-13-01-INIT516 PGK Pseudolites (awarded under and incorporating terms and conditions of Ordnance Technology Base Agreement No.: 2010-321)**

The contractor and subsequent subcontractors shall comply with the following FAR and DFAR clauses. The following Federal Acquisition Regulation Supplement (FARS), Defense Federal Acquisition Regulation Supplement (DFARS) clauses by reference, and local clauses with the same force and effect as if they were given in full text, shall be incorporated.

- FAR 4.402 – Safeguarding Classified Information Within Industry
- FAR 52.204-2 – Security Requirements (AUG 1996)
- FAR 52.227-11 – Patent Rights – Ownership by the Contractor (DEC 2007)
- ARDEC 70, (FOUO) Release of Information Research and Development (FAR 52.224-4000)
- Rights in technical data under this Agreement shall be determined in accordance with the provisions of DFARS Part 227, DFARS 252.227-7013, Rights in Technical Data -- Noncommercial Items and related clauses in DFARS Part 252.227.
- DFAR 252.225-7010 – Commercial Derivative Military Article

The following Special Flow-downs are required by the prime contract base agreement to be flowed down to all sub-tier contractors.

#### **Article VIII DD254 Language**

Only U.S. Citizens are authorized to work on this agreement.

#### **Article IX. PUBLICATION AND ACADEMIC RIGHTS**

*Section 9.01 Reserved*

*Section 9.02 Publication or Public Disclosure of Information*

For purposes of this Article, Government Technical Manager means the AOR designated

by the Government for the Ordnance Technology Initiative Agreement(s) under which the information and/or data whose publication or disclosure at issue was developed

- (a) *Classified Research Initiatives.* If a release of Confidential Information or Trade Secrets is for a classified Ordnance Technology Initiative Agreement, the provisions of the DoD Security Agreement (DD Form 441) and the DoD Contract Security Classification Specification (DD Form 254) apply.
- (b) *Review or Approval of Technical Information for Public Release.*
  - (i) At least 35 days prior to the scheduled release date the Ordnance Technology Initiative Recipient shall submit to the CMF two copies of the information to be released. The CMF will then forward the information to Government Technical Manager, who is hereby designated as the approval authority for the AO for such releases.
  - (ii) Where an Academic Research Institution is the Ordnance Technology Initiative Recipient, who is performing fundamental research on a campus, the CMF shall require such Ordnance Technology Initiative Recipients to provide papers and publications for provision to the Government Technical Manager for review and comment 30 days prior to formal paper/publication submission. However, if that Academic Research Institution incorporates into its research results or publications artifacts produced by and provided to these institutions by the CMF and on behalf of other (non-educational institution) Ordnance Technology Initiative Recipients (or has authors listed on the paper who are not employees or students of the Academic Research Institution) then the procedures in PARAGRAPH (1) ABOVE must be followed.
  - (iii) Parties to this Agreement are responsible for assuring that an acknowledgment of Government support will appear in any publication of any material based on or developed under this Agreement or any subsequent Ordnance Technology Initiative Agreement, using the following acknowledgement terms:

“Effort sponsored by the U.S. Government under Other Transaction number W15QKN-09-9-1001 between the National Warheads and Energetics Consortium and the Government. The US Government is authorized to reproduce and distribute reprints for Governmental purposes notwithstanding any copyright notation thereon.”

- (iv) Parties to this Agreement are also responsible for assuring that every publication of material based on or developed under this Agreement or any subsequent Ordnance Technology Initiative Agreement contains the following disclaimer:

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

- (v) The Ordnance Technology Initiative Recipient shall flow down these

requirements to all Ordnance Technology Initiative subrecipients, at all tiers.

- (c) *Notices.* To avoid disclosure of Confidential Information or Trade Secrets belonging to an NVEC member organization or Ordnance Technology Initiative Recipient and/or the Government and the loss of patent rights as a result of premature public disclosure of patentable information, the Ordnance Technology Initiative Recipient that is proposing to publish or disclose such information is required to provide advance notice to the CMF and identify such other parties as may have an interest in such Confidential Information or Trade Secrets. The CMF shall notify such parties at least ninety (90) calendar days prior to any Ordnance Technology Initiative Recipient's submission for publication or disclosure, together with any and all materials intended for publication or disclosure relating to technical reports, data, or information developed by the parties during the term of and pursuant to this Agreement. The Government must notify the CMF of any objection to disclosure within this ninety (90) day period, or else the Ordnance Technology Initiative Recipient, shall be deemed authorized to make such disclosure.
- (d) *Filing of Patent Applications.* During the course of any such ninety (90) calendar day period, the Ordnance Technology Initiative Recipient to whom such Confidential Information or Trade Secrets belong, and/or the Government shall provide notice to the CMF as to whether it desires that a patent application be filed on any invention disclosed in such materials. In the event that an Ordnance Technology Initiative Recipient to whom such Confidential Information or Trade Secrets belongs and/or the Government desires that such a patent be filed, the Ordnance Technology Initiative Recipient or the Government proposing to publish or disclose such materials agrees to withhold publication and disclosure of such materials until the occurrence of the first of the following:
- (i) Filing of a patent application covering such invention, or
  - (ii) Written agreement, from the Ordnance Technology Initiative Recipient to whom such Confidential Information or Trade Secrets belong that no patentable invention is disclosed in such materials.
  - (iii) Further, during the course of any such ninety (90) calendar day period, the Ordnance Technology Initiative Recipient shall notify the CMF, who will notify the AO and the Government, if it believes any of its Confidential Information or Trade Secrets have been included in the proposed publication or disclosure and shall identify the specific Confidential Information or Trade Secrets that need to be removed from such proposed publication. The Government, the CMF, and the Ordnance Technology Initiative Recipient proposing the publication or disclosure of such materials agree to remove from the proposed publication or disclosure all such Confidential Information or Trade Secrets so identified by the Ordnance Technology Initiative Recipient.

## **Article X. PATENT RIGHTS**

### *Section 10.01 Definitions*

Patent Rights for work funded by this Agreement or subsequent Ordnance Technology Initiative Agreements shall be as specified in FAR 52.227-11 (“Patent Rights- Ownership by the Contractor (DEC 2007)”), which is hereby incorporated by reference with the following modifications:

- (a) As appropriate, replace "Contractor" with "Consortium Member(s)" throughout; replace “Contracting Officer”, "the agency" and "the Federal Agency" with "Government" throughout; and replace "contract" with "Agreement" throughout.
- (b) Add the following to Subclause (b) "Contractor’s rights":
  - (i) Government Employee Inventions. The parties agree that Joint Munitions and Lethality Life Cycle Management Command (JM&LCC-ETC), on behalf of the U.S. Government shall have the initial option to retain title to each Subject Invention made only by its employees. JM&LCC-ETC shall promptly notify Consortium member organization(s) upon making this election, and in the event that JM&LCC-ETC retains title to said Subject Inventions, JM&LCC-ETC agrees to timely file patent applications thereon at its own expense and agrees to grant to Consortium members a non-exclusive, irrevocable paid-up license to practice such Subject Invention throughout the world. JM&LCC-ETC may release the rights provided for by this paragraph to its employee inventors subject to a license in the Consortium member organization(s) as described above.
  - (ii) Joint Employee Inventions. The parties agree that JM&LCC-ETC, on behalf of the U.S. Government shall have the initial option to retain title to each Subject Invention Made jointly by Ordnance Technology Initiative Recipient and JM&LCC-ETC employees. JM&LCC-ETC shall promptly notify the Ordnance Technology Initiative Recipient upon making this election and in the event that JM&LCC-ETC informs NWEC that it elects to retain title to such joint Subject Invention, NWEC agrees to assign to JM&LCC-ETC whatever right, title and interest Consortium Member(s) has in and to such joint Subject Invention. JM&LCC-ETC agrees to timely file patent applications on such Subject Invention at its own expense and agrees to grant to the Ordnance Technology Initiative Recipient a non-exclusive, irrevocable paid-up license to practice such Subject Invention throughout the world.

### *Section 10.02 Patent Reports*

The NWEC member organization shall file Invention (Patent) Reports as of the close of the performance year and at the end of the term for this Agreement. Annual reports are due thirty (30) calendar days after the expiration of the final performance period.

Ordnance Technology Initiative Recipients are required to use the DD Form 882, Report of Inventions and Subcontracts, to file an invention report. Negative reports are also required. The NWEC member organization shall submit the original and one copy to the CMF.

### *Section 10.03 Final Payment*

Final payment cannot be made, nor can an Ordnance Technology Initiative be closed out, until

the Ordnance Technology Initiative Recipient delivers to the CMF all disclosures of subject inventions required by this Agreement, an acceptable final report pursuant to the article entitled “Reports”, and all confirmatory instruments.

*Section 10.04 Cooperation*

The Government, the CMF, and the Ordnance Technology Initiative Recipient shall keep the others informed as to the status of joint patent matters. The Government and the Ordnance Technology Initiative Recipient through the CMF shall each reasonably cooperate with and assist the other at its own expense in connection with such activities, at the other Party’s request during the term of this Agreement.

*Section 10.05 Lower Tier Agreements*

The Ordnance Technology Initiative Recipient shall include this Article, suitably modified, to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work performed under the Ordnance Technology Initiatives awarded pursuant to this Agreement.

*Section 10.06 Alternate Rights*

Notwithstanding the previous Sections of this Article, differing patent rights may be negotiated between the CMF on behalf of the Government and the Ordnance Technology Initiative Recipient on a case-by-case basis.

**Article XI. DATA RIGHTS AND COPYRIGHTS**

*Section 11.01 General*

Rights in technical data under this Agreement shall be determined in accordance with the provisions of DFARS Part 227, DFARS 252.227-7013, Rights in Technical Data -- Noncommercial Items and related clauses in DFARS Part 252.227. With respect to both unlimited and Government purpose license rights provided for in those regulations, the Government acknowledges and agrees that it shall obtain such rights pursuant to this Agreement only to the extent that it’s financial contributions toward the development of the technical data is equal to or greater than 50% of the total costs of such development.

The Ordnance Technology Initiative Recipient reserves the right to protect by copyright original works developed under this Agreement and any subsequent Ordnance Technology Initiative Agreement. All such copyrights will be in the name of the individual Ordnance Technology Initiative Recipient. The NWEA member organization 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, for Governmental purposes, any copyrighted materials developed under this Agreement, and to authorize others to do so.

In the event Data is exchanged with a notice indicating that the Data is protected under copyright as a published, copyrighted work and it is also indicated on the Data that such Data existed prior to, or was produced outside of this Agreement or any subsequent Ordnance Technology Initiative Agreement, the Government, the CMF (acting on the Government’s behalf), or NVEC member organization receiving the Data and others acting on its behalf may reproduce, distribute, and prepare derivative works for the purpose of carrying out its responsibilities under this Agreement or any subsequent Ordnance Technology Initiative Agreement between the CMF and NVEC member organization.

The NVEC member organization is responsible for affixing appropriate markings indicating the rights of the Government on all data and technical data delivered under Ordnance Technology Initiative Agreements.

*Section 11.02 Data First Produced by the Government*

As to Data first produced by the Government in carrying out the Government's responsibilities under the Ordnance Technology Initiative Agreements and which Data would embody trade secrets or would comprise commercial or financial information that is privileged or confidential if obtained from an Ordnance Technology Initiative Recipient, such Data will, to the extent permitted by law, be appropriately marked with a suitable notice or legend and maintained in confidence for a period of five (5) years after the development of the information, with the express understanding that during the aforesaid period such Data may be disclosed and used (under suitable protective conditions) by or on behalf of the Government for Government purposes only.

*Section 11.03 Government Prior Technology*

In the event it is necessary for the Government to furnish an Ordnance Technology Initiative Recipient with Data which existed prior to, or was produced outside of this Agreement or a subsequent Ordnance Technology Initiative Agreement, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used by the NVEC member organization only for the purpose of carrying out the Ordnance Technology Initiative Recipient’s responsibilities under the Ordnance Technology Initiative Agreement. Data protection will include proprietary markings and handling, and the signing of non-disclosure agreement by the Ordnance Technology Initiative Recipient’s employees and/or their subcontractors' employees.

Upon completion of activities under the applicable Ordnance Technology Initiative Agreement, such Data will be disposed of as requested by the Government.

*Section 11.04 Consortium Member Organization’s Prior Technology*

In the event it is necessary for an Ordnance Technology Initiative Recipient to furnish the Government with Data which existed prior to, or was produced outside of this Agreement or a subsequent Ordnance Technology Initiative 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 non-disclosure

agreements by such Government Contractors or contract employees. With respect to the use of such technical data or software by other NVEC member organizations, the Ordnance Technology Initiative Recipient with proprietary rights may offer to license such rights for use exclusively in the performance of Ordnance Technology Initiative Agreements conducted under other Ordnance Technology Initiative Agreements by other Consortium member organizations, on reasonable terms and conditions under a non-exclusive license without the right to

sub-license. The Ordnance Technology Initiative Recipient furnishing Data which existed prior to, or was produced outside of this Agreement or subsequent Ordnance Technology Base Agreements, has the right to license such Data to other NVEC member organizations or to entities not a party to NVEC for a fee and/or royalty payments as determined by the Ordnance Technology Initiative Recipient furnishing such Data. An Ordnance Technology Initiative Recipient shall not be obligated to provide Data that existed prior to, or was developed outside of this Agreement to other NVEC member organization or the Government. Upon completion of activities under the applicable Ordnance Technology Initiative Agreements, such Data will be disposed of as requested by the Ordnance Technology Initiative Recipient.

#### *Section 11.05 Oral and Visual Information*

If information which an Ordnance Technology Initiative Recipient considers to embody trade secrets or to comprise commercial or financial information which is privileged or confidential is disclosed orally or visually to the Government, such information must be reduced to tangible, recorded form (i.e., converted into Data as defined herein), identified and marked with a suitable notice or legend, and furnished to the Government and CMF within 10 calendar days after such oral or visual disclosure, or the Government shall have no duty to limit or restrict, and shall not incur any liability for, any disclosure and use of such information.

#### *Section 11.06 Disclaimer of Liability*

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

- (a) Data not identified with a suitable notice or legend as set forth in Section 11.01 herein or Article VIII; nor
- (b) Information contained in any Data for which disclosure and use is restricted under Section 11.01, if such information is or becomes generally known without breach of the above, is known to or is generated by the Government or CMF independently of carrying out responsibilities under this Agreement or subsequent Ordnance Technology Initiative Agreements, is rightfully received from a third party without restriction, or is included in Data which the member organizations have, or are required to furnish to the Government without restriction on disclosure and use.

#### *Section 11.07 Marking of Data*

Any Data delivered under this Agreement, by the Government, CMF or Ordnance Technology Initiative Recipient, shall be marked with a suitable notice or legend.

#### *Section 11.08 Lower Tier Agreements*

The NVEC member organization shall include this Article suitably modified to identify the

parties, in all subcontracts, lower tier agreements, regardless of tier, for experimental, development, or research work performed under the Ordnance Technology Initiative Agreements, pursuant to this Agreement.

Section 11.09 *Other Instances*

Notwithstanding Paragraphs in this Article, differing rights in data may be negotiated between the Government through the CMF and the Ordnance Technology Initiative Recipient to each individual Ordnance Technology Initiative Agreement on a case by case basis.

## **Article XII. FOREIGN ACCESS TO TECHNOLOGY AND EXPORT CONTROL**

Section 12.01 *Foreign Access to Technology*

This Article shall remain in effect during the term of the Agreement and the term of the Ordnance Technology Initiative Agreements issued under this Agreement.

(a) *Definition*

- (i) “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.
- (ii) “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.
- (iii) “Technology” means discoveries, innovations, Know-How and inventions, whether patentable or not, including computer software, recognized under U.S. law as intellectual creations to which rights of ownership accrue, including, but not limited to, patents, trade secrets, mask works, and copyrights developed under this Agreement.

(b) *General*

The Parties agree that research findings and technology developments arising under this Agreement may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under this Agreement by Foreign Firms or Institutions must be carefully controlled. The controls contemplated in this Article are in addition to, and are not intended to change or supersede, the provisions of the International Traffic in Arms Regulation (22 CFR Part 121 et seq.), the DoD Industrial Security Regulation (DoD 5220.22-R) and the Department of Commerce Export Regulation (15 CFR Part 770 et seq.)



## (c) Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions

- (i) In order to promote the national security interests of the United States and to effectuate the policies that underlie the regulations cited above, the procedures stated in subparagraphs C(2), C(3), and C(4) below shall apply to any transfer of Technology. For purposes of this paragraph, a transfer includes a sale of the company, and sales or licensing of Technology. Transfers do not include:
- 1) Sales of products or components, or
  - 2) Licenses of software or documentation related to sales of products or components, or
  - 3) Transfer to foreign subsidiaries of the Ordnance Technology Initiative Recipient for purposes related to this Agreement, or
  - 4) Transfer which provides access to Technology to a Foreign Firm or Institution which is an approved source of supply or source for the conduct of research under this Agreement provided that such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under this Agreement.
  - 5) Releases pursuant to Article IX hereof ("Publication and Academic Rights")
- (ii) The NWEC Member Organization shall provide to the CMF timely notice to the Government of any proposed transfers of Technology developed under this Agreement to Foreign Firms or Institutions. If the Government determines that the transfer may have adverse consequences to the national security interests of the United States, the NWEC, its CMF, the Ordnance Technology Initiative Recipient(s), and the Government shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer but which provide substantially equivalent benefits to the Ordnance Technology Initiative Recipient(s).
- (iii) In any event, the NWEC Member Organization shall provide written notice to the CMF of any proposed transfer by an Ordnance Technology Initiative Recipient to a foreign firm or institution at least sixty five (65) calendar days prior to the proposed date of transfer. Such notice shall cite this Article and shall state specifically what is to be transferred and the general terms of the transfer. The CMF will in turn forward the notice to the Government AO's Representative and AO. Within thirty (30) calendar days of receipt of the CMF's written notification, the Government AO shall advise the CMF whether it consents to the proposed transfer. In cases where the Government does not concur or if within sixty (60) calendar days after its receipt the Government has provided no decision, the Ordnance Technology Initiative Recipient may utilize the procedures under Article VII, Disputes. No transfer shall take place until a decision is rendered.

- (iv) In the event a transfer of Technology to Foreign Firms or Institutions which is NOT approved by the Government takes place, the Ordnance Technology Initiative Recipient via the CMF shall (a) refund to the Government those funds paid under this Agreement for the development of the Technology and (b) the Ordnance Technology Initiative Recipient shall provide to the Government a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the United States the Technology throughout the world for Government and any and all other purposes, particularly to effectuate the intent of this Agreement. Upon request of the Government, the CMF shall obtain and provide written confirmation of such licenses from the Ordnance Technology Initiative Recipient.

#### Section 12.02 *Lower Tier Agreements*

The NWEAC Member Organization shall include this Article, suitably modified, to identify the Parties, in all Ordnance Technology Initiative Agreements or lower tier agreements, regardless of tier, for experimental, developmental, or research work conducted under this Agreement.

#### Section 12.03 *Export Control*

##### (a) *Export Compliance.*

Each Party agrees to comply with U.S. Export regulations including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. § § 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. § 120 et seq.; and the Export Administration Act, 50 U.S.C. app. § 2401-2420, including the Export Administration Regulations, 15 C.F.R. §730 et seq. Each Party is responsible for obtaining from the Government export licenses or other authorizations/approvals, if required, for information or materials it exports. Accordingly, the Parties shall not export, directly, or indirectly, any products and/or technology, Confidential Information, Trade Secrets, or Classified and Unclassified Technical Data in violation of any U.S. Export laws or regulations.

##### (b) *Flow down.*

The NWEAC Member Organization shall include this Article, suitably modified, to identify all parties, in all Ordnance Technology Initiative Agreements or lower tier agreements. This Article shall, in turn, be included in all sub-tier subcontracts or other forms of lower tier agreements, regardless of tier.

## **Article XVII. LIABILITY OF THE PARTIES**

#### Section 17.01 *Definitions*

For the purposes of this Article the “Parties” is defined as the Government, the NWEAC member organization, and the CMF.

#### Section 17.02 *Waiver of Liability*

With regard to the activities undertaken pursuant to this Agreement, no Party shall make any

claim against the others, employees of the others, the others’ related entities (e.g., contractors, subcontractors, etc.), or employees of the others’ related entities for any injury to or death of its own employees or employees of its related entities, or for damage to or loss of its own property or that of its related entities, whether such injury, death, damage or loss arises through negligence or otherwise, except in the case of willful misconduct.

#### Section 17.03 *Damages*

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

#### Section 17.04 *Extension of Waiver of Liability*

The NWEC Member Organization agrees to extend the waiver of liability as set forth above to subcontractors or sub entities at any tier under a Ordnance Technology Initiative Agreement by requiring them, by contract or otherwise, to agree to waive all claims against the Parties.

#### Section 17.05 *Applicability*

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

- (a) Claims between the Ordnance Technology Initiative Recipient and the CMF regarding a material breach or nonpayment of funds;
- (b) Claims for damage caused by willful misconduct; and
- (c) Intellectual property claims.

#### Section 17.06 *Limitation of Liability*

In no case shall the CMF’s, or the Ordnance Technology Initiative Recipient’s financial liability exceed the amount obligated by the Government or committed as a Cash Contribution or In-kind Contribution by a Ordnance Technology Initiative Recipient under an Ordnance Technology Initiative Agreement. Nothing in this Article shall be construed to create the basis of a claim or suit where none would otherwise exist.

The Government does not contemplate any unusually hazardous risks being associated with the initiatives to be performed under this Agreement; however, the Government will consider going forward with a request for special indemnification or the inclusion of specially negotiated liability provisions where a Ordnance Technology Initiative, as identified by the Government or by the NWEC through its CMF on behalf of the Ordnance Technology Initiative Recipients or proposing NWEC member organizations may pose a risk of such nature.

## Article XIX. General Provisions

### Section 19.01 *Reserved*

### Section 19.02 *Security*

Work by the Ordnance Technology Initiative Recipient under Ordnance Technology Initiative Agreements pursuant to the Annual Technology Plan may involve access to information classified as “Confidential”, “Secret”, or “Top Secret”. The NVEC member organization and their employees who work on such Ordnance Technology Initiative Agreements shall comply with (1) the Security Agreement (DD Form 441), including the National Industrial Security Program Operation Manual (DOD 5220.22M) and (2) any revisions to that manual that may be issued. During the course of this Agreement the Parties may determine that information developed by the NVEC member organizations and/or the Government pursuant to this Agreement shall be treated as classified. Such information shall be classified in accordance with DOD 5220.22M.

1. Each Ordnance Technology Initiative Scope of Works will be provided by the Agreement Officer Representative (AOR) to the United States Army Garrison (USAG), Picatinny Industrial Security Office to review and provide the overall Security Classification Specification (DD form 254) for any classified effort. The DD form 254 will identify the Agreements Officer (AO) and the Agreement Officer’s Representative (AOR), Director of DOD Ordnance Technology Consortium (DOTC). Each individual will provide their name, title and telephone number and will sign certifying all security requirements stated herein are complete and adequate for safeguarding the classified information to be released and/or generated under this classified Ordnance Technology Initiative Agreement effort.

The NVEC member will be responsible for providing a copy of any Subcontract Security Classification Specification (DD Form 254) to lower tier awards.

2. If an Ordnance Technology Initiative Agreement involves a classified effort, the following Department of Defense Directives, ARDEC Clauses, Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS) clauses by reference, and local clauses will be incorporated with the same force and effect as if they were given in full text shall be incorporated into this agreement.

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

- a. DoD 5200.1-R Information Security Regulation, 7 Jan 97
- b. DoD 5200.2-R Personnel Security Regulation, Jan 87
- c. DoDD 5220.22 National Industrial Security Program, 28 Feb 06
- d. DoDI 5200.01, Information Security Program and Protection of Sensitive Compartmented Information, 9 Oct 08
- e. DoD 5400.7-R, DOD Freedom of Information Act, Sept 98

- f. DODD 2000.12, Antiterrorism Program, 18 Aug 03
- g. ARDEC Clause 68, Identification of Contractor Employees (requirement is only applicable to contractor employees working on Picatinny Arsenal)
- h. ARDEC Clause 18, Physical Security Standards for Sensitive Items (Required when AA&E apply)
- i. ARDEC Clause 70, (FOUO) Release of Information Research and Development (reference FAR 2.101)
- j. FAR Clause 4.402, Safeguarding Classified Information Within Industry
- k. FAR Clause 52.204-2, Security Requirements, Aug 1996

#### 4. Agreement Structure

a. Research and Development under these Ordnance Technology Initiative Agreements in accordance with the Other Transaction Agreement (OTA) between the United States Army Contracting Command (Joint Munitions and Lethality Contracting Center) (JM&LCC) and the NVEC in care of its Consortium Management Firm (CMF) - Advanced Technology Institute (ATI).

b. Within these Ordnance Technology Initiative Agreement’s sharing of classified information will be on a need to know basis as directed in required Ordnance Technology Initiative Agreements.

c. Upon Ordnance Technology Initiative Agreement completion or termination, Ordnance Technology Initiative Recipient must.

- (1) Return ALL classified received or generated under the Ordnance Technology Initiative Agreement;
- (2) Destroy all of the classified; or,
- (3) Request retention for a specified period of time

For all Ordnance Technology Initiative Agreements, the following statement shall be flowed to the NVEC consortium members unless otherwise stated within the Ordnance Technology Initiative Agreements.

Classification guidance for requirement – “The security level for this agreement is UNCLASSIFIED. All reference materials, synthesis and processing ingredients, processing parameters and methods, ballistic test data and results, obtained, produced or developed by the Ordnance Technology Initiative Recipient as part of this effort shall become the property of the Government, and shall be delivered to the Government upon completion of this contract. All data and results to be developed, modified or converted under this agreement shall be delivered with unlimited and unrestricted rights to the U.S. Government.”

#### Section 19.03 *Safety*

A Safety Survey will be conducted by the Government on the Ordnance Technology Initiative Recipient prior to handling of explosives, production of any hardware or fire testing under the Ordnance Technology Initiative Agreements.

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

**DFARS 252.223-7001** - Hazard Warning Labels

**DFARS 252.223-7002** - Safety Precautions for Ammunition and Explosives

**DFARS 252.223-7003** - Change in Place of Performance

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

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

**FAR 52.223-3** Identification and Material Safety Data

**FAR 52.247-29** F.O.B. Origin

**ARDEC 18** Physical Security Standards for Sensitive Items

**ARDEC 169** Explosive Material Handling

**ARDEC 66** Safety Requirements for Hazardous Items

**ARDEC 77** Material Safety Data Sheets

The Ordnance Technology Initiative Recipient shall adhere to all local, state, and federal rules and regulations required in order to maintain a safe and non-hazardous occupational environment throughout the duration of this initiative. At a minimum, the Ordnance Technology Initiative Recipient shall provide the following reports and materials on an as needed basis:

**Accident/Incident Report:** The Ordnance Technology Initiative Recipient shall report immediately any major accident/incident (including fire) resulting in any one or more of the following: causing one or more fatalities or one or more disabling injuries; damage of Government property exceeding \$10,000; affecting program planning or production schedules; degrading the safety of equipment under initiative, such as personnel injury or property damage may be involved; identifying a potential hazard requiring corrective action. The Ordnance Technology Initiative Recipient shall prepare the report (DI-SAFT- 81563) for each incident.

**Material Safety Data Sheets (MSDS):** The Ordnance Technology Initiative Recipient

shall prepare and maintain MSDS for all materials used and generated under Ordnance Technology Initiative Agreements.

**Explosive Hazard Classification Report:**

The Ordnance Technology Initiative Recipient shall submit an explosive hazard classification report (DI-SAFT-81299A) for each item that requires utilizing RDECOM- ARDEC capabilities to obtain Interim Hazard Classification (IHC) for shipment of R&D quantities of energetic materials/items in support of any Ordnance Technology Initiative Agreement. The Ordnance Technology Initiative shall utilize the capability of ARDEC to obtain IHC for shipment of R&D quantities of energetic materials/items in support of any Ordnance Technology Initiative Agreement on an as needed basis. In order to use this support, the Ordnance Technology Initiative Recipient shall provide technical data (Explosive Hazard Classification Data) to ARDEC System Safety Group 60 days prior to shipment of the energetic materials/item. This will include the necessary data explained in Army Technical Bulletin (TB) 700-2 and (DI-SAFT-81299A). Dot and UN Serial number information, along with packaging methods, will be based on Title 49, Code of Federal regulations (CFR). The Ordnance Technology Initiative Recipient shall determine the explosive weight for quantity-distance determination in accordance with the guidance of paragraph 15.4C of AMC-R 385-100.

**Environmental Requirements:**

**Pollution Prevention:** Consideration should be given to alternative materials and processes in order to eliminate, reduce, or minimize hazardous waste being generated. This is to be accomplished while minimizing item cost and risk to item performance.

**Environmental Compliance:** All activities must be in compliance with Federal, State, and local environmental laws and regulations, Executive orders, treaties, and agreements. The Ordnance Technology Initiative Recipient shall evaluate the environmental consequences and identify the specific types and amounts of hazardous waste being generated during the conduct of efforts undertaken under any Ordnance Technology Initiative Agreement.

**Hazardous Waste Report:** The Ordnance Technology Initiative Recipient shall evaluate the environmental consequences and identify the specific types and amounts of hazardous waste being generated during an Ordnance Technology Initiative Agreement. The Ordnance Technology Initiative Recipient shall submit a Hazardous Waste Report IAW DI-MGMT-80899.

**Disposal Instructions for Residual/Scrap Materials:** The recipient shall dispose of all residual and scrap materials generated from Ordnance Technology Initiative Agreements, including high explosives. The Ordnance Technology Initiative Recipient shall specify the anticipated quantities, methods, and disposal costs.

