

PROJECT AGREEMENT

BETWEEN

ADVANCED TECHNOLOGY INTERNATIONAL  
315 SIGMA DRIVE  
SUMMERVILLE, SC 29486

AND

**PROJECT AGREEMENT AWARDEE NAME**  
**PROJECT AGREEMENT AWARDEE ADDRESS**

BASE VERTICAL LIFT CONSORTIUM (VLC) PROJECT AGREEMENT NO.: \_\_\_\_\_

Agreement Term: The ordering term of this agreement is five (5) years from the date of award, although awarded tasks shall continue through the Date of Completion established in each Project Task Assignment.

Authority: VLC Other Transaction Agreement (OTA) No. W15QKN-16-9-1001 and 10 U.S.C. § 2371b, Section 815 of the 2016 National Defense Authorization Act, P.L 114-92

This Agreement is entered into between the Advanced Technology International, hereinafter referred to as the "Consortium Administrative Organization (CAO)," and **Company Name**, hereinafter referred to as "Project Agreement Awardee." This Agreement constitutes the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes all prior representations and agreements. It shall not be varied except by an instrument in writing of subsequent date duly executed by an authorized representative of each of the parties. The validity, construction, scope and performance of this Agreement shall be governed by the laws of the state of South Carolina, excluding its choice of laws rules.

ADVANCED TECHNOLOGY INTERNATIONAL

FOR THE PROJECT AGREEMENT AWARDEE  
**NAME OF PROJECT AGREEMENT AWARDEE**

\_\_\_\_\_  
(Name & Title)

\_\_\_\_\_  
(Name & Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

## ARTICLE I: SCOPE OF THE AGREEMENT

### A. Background

In a memorandum, dated October 26, 2009, the Under Secretary of Defense (Acquisition, Technology and Logistics) [USD(AT&L)] established an initiative to improve the long-term state of military vertical lift aircraft and the U.S. vertical lift industrial sector. The goal is to establish a formal, long-term (~20 year) mechanism to facilitate teaming, networking, planning, and technology development in the aviation industry. In this memorandum, the Under Secretary stated that “this initiative will only be successful with the full support of, and partnership with, the vertical lift aircraft industry” and authorized the Director, Land Warfare and Munitions “to engage and contract with industry and academia as necessary and appropriate to enable such a partnership.” As such, the Army Contracting Command – New Jersey, is establishing this Other Transaction Agreement (OTA) as the fundamental forum and mechanism to establish U.S. leadership in the advancement of Future Vertical Lift (FVL) initiatives.

The Vertical Lift Consortium (VLC) represents industry and academia brought together to enhance the U.S. Government’s aviation technologies by leveraging the national industrial and academic research and development bases. Formed in 2010, the VLC shall operate according to the terms and conditions of the VLC Bylaws, executed by each of the member entities. The Government and VLC through its CAO are entering into this Other Transaction Agreement (OTA) to provide for the establishment of an acquisition instrument to conduct Technology Research, Development, and Test and Evaluation Initiatives, that support the objectives set forth in this Agreement. This Agreement is considered a Prototype Other Transaction as authorized by 10 USC 2371b. It comprises the terms and conditions under which VLC will execute projects.

This OTA will assist in facilitating the establishment of a government, industry and academic collaborative effort for the development of advances in aviation in support of current and future DoD requirements. Through this instrument, as defined below, the Government will work with VLC and members of VLC through Project Agreements with those VLC Members and teams of VLC Members whose proposals are evaluated and selected by the Government through the competitive process in response to the Government's Request for Project Proposals (RPP), Task Requests, or SBIR Phase III projects.

This OTA joins industry stakeholders at all levels in collaborating with the Government to speed development of technology and lay the foundation for Future Vertical Lift (FVL) family of systems. The process allows for the industry's most creative and innovative minds, using VLC as a conduit, to advance innovative FVL prototype concepts to the benefit of all Government end-users in the most cost-efficient manner. The end result maximizes total FVL system effectiveness for the warfighter and minimizes cost to the Government, while protecting proprietary data of VLC Members.

On 29 December 2015, VLC entered into an Other Transaction Agreement (the “OTA”) with the United States of America (the “Government”), Agreement No. W15QKN-16-9-1001. The OTA requires VLC through its CAO to enter into a Project Agreement with each VLC member whose project proposal is selected by the Government, through its competitive process, for funding under the OTA.

On [REDACTED], Project Agreement Awardee entered into a Membership Application and Agreement with VLC, pursuant to which Project Agreement Awardee became a member of VLC and agreed to comply with all provisions of the OTA. Accordingly, this Base VLC Project Agreement, which flows down the terms and conditions of the OTA, is entered pursuant to the OTA.

### B. Definitions

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

“Agreement,” “Project Agreement” or “Base VLC Project Agreement” means that agreement between the VLC CAO and the VLC member organization that serves as the baseline agreement for all future funded Project Task Assignments and flows down applicable terms and conditions from the Other Transaction Agreement between the Government and VLC through its CAO.

“Agreements Officer (AO)” is the Army Contracting Command warranted Contracting Officer authorized to sign the final OTA for the Government.

“Agreements Officer Representative (AOR)” is the individual designated by the Government on a per project basis to monitor all technical aspects and assist in agreement administration of the specific project.

“Army Contracting Command – New Jersey” means the Army Contracting Command who is designated as the lead Government organization in charge of executing the Program.

“Cash Contribution” means a VLC member organization’s financial resources expended to conduct a project awarded under this Agreement. The cash contribution can be derived from VLC member organization funds or outside sources or may also come from non-federal contract or grant revenues or from profit or fee on a federal procurement contract. A VLC member organization’s own source of funds may include corporate retained earnings, current or prospective Independent Research and Development (IR&D) funds or any other indirect cost pool allocation. New or concurrent IR&D funds can be utilized as a cash contribution provided those funds identified by the VLC member organization are to be spent on the conduct of a VLC Project Task Assignment Statement of Work. Prior IR&D will not be considered as part of the VLC member organization’s cash or in kind contributions nor will fee be considered on the project recipient’s cost sharing portion. Cash contributions include the funds a VLC member organization will spend for labor (including benefits and direct overhead), materials, new equipment (prorated if appropriate), subcontractor efforts expended on a project, and restocking the parts and material consumed under a project.

“Consortium Administrative Organization (CAO)” refers to the agent acting on behalf of Vertical Lift Consortium, Inc. to execute and administer the efforts under the Other Transaction Agreement for this program as defined in the specific agency agreement entered into between VLC and the CAO. The current CAO is Advanced Technology International.

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

“Cost Share” means resources expended by a VLC project recipient on the proposed Project Task Assignment SOW and subject to the direction of the AOR. There are two kinds of cost share: cash contribution and in-kind contribution. Cost Share may only be proposed and collected on cost-reimbursement type agreements.

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

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

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

“Effective Date” means the date of last signature.

“Government” means the US Government and its departments and agencies.

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

“In Kind Contribution” means the VLC member organization’s nonfinancial resources expended by the VLC member organization to conduct a project, such as wear and tear on in-place capital assets like machinery or the prorated value of space used for the conduct of a project, and the reasonable fair market value (appropriately prorated) of equipment, materials, and other property used in the conduct of the project.

“Milestone” means a scheduled event signifying the completion of a major deliverable or a set of related deliverables.

“Nontraditional Defense Contractor” means an entity that is not currently performing and has not performed, for at least the one-year period preceding the issue date of the Request for Project Proposals, any contract or subcontract for the Department of Defense that is subject to full coverage under the cost accounting standards prescribed pursuant to section 1502 of title 41 and the regulations implementing such section. A nontraditional defense contractors can be at the prime level, team members, subcontractors, lower tier vendors, or "intra-company" business units; provided the business unit makes a significant contribution to the prototype initiative (i.e., is a key participant). Examples of what might be considered a significant contribution includes supplying new key technology or products, accomplishing a significant amount of the effort, or in some other way causing a material reduction in the cost or schedule or increase in the performance. The ACC-NJ-ET will follow the specific guidance from OSD concerning the use of nontraditional defense contractors. Nontraditional defense contractors will be required to provide a DUNS number. A VLC Member’s status as a Nontraditional Defense Contractor will be assessed at the time of award of a particular project agreement under the OTA.

“Other Transactions Agreement (OTA)” is the term commonly used to refer to the 10 USC 2371b authority to enter into 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 Department of Defense, or to improvement of platforms, systems, components, or materials in use by the armed forces. OTAs are acquisition instruments that generally, are 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 (i.e. DFARS) or laws that are limited in applicability to procurement contracts. OTAs are governed by CFR Chapter 32, Subtitle A, Chapter 1, Subchapter A, Part 3 “Transactions Other Than Contracts, Grants, Or Cooperative Agreements For Prototype Projects.”

"OTA" refers to the Other Transaction Agreement between the Government and Vertical Lift Consortium, Inc. by its agent Advanced Technology International, Agreement No. W15QKN-16-9-1001.

“Parties” means, unless otherwise defined in a specific Article, the CAO and the Project Agreement Awardee where collectively identified and “Party” where each entity is individually identified.

“Payable Milestone” means that once a milestone has been met (see definition of “Milestone”), the Government can approve payment to VLC of a predetermined dollar amount in relation to performance of a particular project under the Other Transaction Agreement.

"Project Agreement Awardee" means the VLC member entity(ies) or team of member entities issued a Project Agreement by VLC through its CAO.

“Project Task Assignment” means that agreement between VLC, by its CAO, and the VLC member entity whose proposal for a project is evaluated and competitively selected by the Government for award under the OTA and the Project Agreement with a VLC member organization. Project Task Assignments establish the scope of work, terms and conditions for the VLC member entity’s performance, and payment under the Government funded project. Project Task Assignments are issued by the CAO to the VLC member organization to be performed under the terms contained in the “Base VLC Project Agreement” and the “Project Task Assignment”.

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

“Small Business Innovative Research (SBIR) Phase III Project” refers to an effort that was previously competed and performed via a SBIR Phase I and/or Phase II contract for which the Government is looking to continue R&D efforts

as a SBIR Phase III project under this OTA. As this project was previously competed and performed by one individual, the request for proposal would be submitted from the CAO directly to the VLC member identified by the Government. The objective of SBIR Phase III is for a small business to pursue technology maturation and commercialization objectives resulting from previous SBIR work. SBIR Phase III projects are funded by individual U.S. Government organizations and not by the SBIR program, which is the case for SBIR Phase I and Phase II contracts.

“Task Request” means a solicitation provided by the Government to VLC through its CAO that includes a detailed description of activities, schedules, and funding, as appropriate, for VLC consideration and acceptance of its commitment to perform the task.

“Technical Direction Letter” means the Government document to be issued to VLC reflecting the Government's decision to select and fund all or part of a particular proposal submitted by VLC, a VLC Member, or a team of VLC Members through the RPP, Task Request, or SBIR Phase III process described in this Agreement, which shall establish the scope of work and terms and conditions for performance and payment and include the proposal selected for Government project funding.

“Vertical Lift Consortium” or “VLC” is an open consortium formed by industry and academia comprising of traditional defense contractors and Nontraditional Defense Contractors, including small and large (other than small) businesses, for profit and not for profit entities, and academic research institutions, which will facilitate the establishment of a government, industry and academic collaborative effort for the development of advances in aviation technologies in support of current and future DoD requirements. The consortium will comprise U.S. companies, including U.S. companies under foreign ownership, control or influence (FOCI), that are both “FOCI-mitigated” and possess a facility clearance level (FCL) for the appropriate classification.

“VLC Board” is the VLC Board of Directors, which comprises representatives of original equipment manufacturers, traditional and non-traditional defense contractors, suppliers, engine manufacturers, academic and non-profit research institutions, small vertical takeoff and landing organizations, and the American Helicopter Society. The VLC Board is established by a vote of the VLC membership.

“VLC Bylaws” means the agreement governing the rights and obligations of the VLC member organizations as they relate to the organization and operation of VLC. As of the effective date of this OTA, the current VLC Bylaws are dated 23 January 2013.

“VLC Members” means the original equipment manufacturers, traditional and non-traditional defense contractors, suppliers, engine manufacturers, academic and non-profit research institutions, and small vertical takeoff and landing organizations that are members in good standing of VLC.

“VLC OTA Technical Manager” means the Technical Administrator for the Program (located at the AMRDEC) responsible for Government oversight of the VLC OTA program.

### C. Scope

The Government in conjunction with VLC shall perform a coordinated research and development program designed to develop prototype aviation technologies. Under the OTA and associated VLC Project Agreements and Project Task Assignments, the Government, along with the non-government members from VLC, shall perform coordinated planning and research and development prototype efforts designed to encompass the following as it relates to aviation technologies:

Aeromechanics	Rotorcraft Structures
Vehicle Management Systems	Rotorcraft Subsystems
Transmissions and Drives Systems	Engines and Motors
Other Power Sources & Electrical	Survivability
Human Systems Interfaces (HSI)	Engagement and Effects
Avionics and Networks Communications	Demonstration & Prototype Flight Testing
Autonomy & Teaming	Flight Operations

Operations Support and Sustainment                      Effectiveness Analysis  
Aerial Systems Concept Designs & Analysis Systems

The Government will identify those technology concepts or industry participation needs it seeks to pursue under the OTA then issue an RPP, Task Request, or SBIR Phase III request to the CAO, acting on behalf of VLC, for the research area(s) or Future Vertical Lift support/participation to be funded.

For Request for Project Proposals (RPPs) the CAO shall distribute the calls for proposals to the VLC Members. Each VLC Member shall then determine whether to submit any proprietary proposals individually or in conjunction with one or more other VLC Members under the terms and conditions of separate teaming agreements to which VLC is not a party. The CAO will review the proposals for completeness and conformity with format requirements laid out in the call for proposals. The CAO will forward all VLC Member proposals to the Government for its evaluation and competitive selection process. The Government shall select the proposals it will fund. The Government will define specific execution details (to include a project SOW, any unique or tailored terms and conditions, and terms for payment) in a Technical Direction Letter that will be issued to the CAO. VLC shall enter into Project Agreement(s) for the work selected by the Government for funding with the VLC Members whose proposals have been selected by the Government. The CAO, acting on behalf of VLC, shall be responsible for the Project Agreement administration of the work funded, while the Government-designated AOR shall be responsible for technical management of each project funded, overseeing performance of the Project Agreement Awardees under the project, and reviewing and approving deliverables and Milestone Payments. The CAO will support an annual review of the performance of all VLC Projects under this OTA. The review will consist of a brief status report of the performance of each project VLC is executing in that given year. The review will also address the aggregate performance under the OTA such as percentage of projects on schedule and within budget as well as those that have deviated from planned schedules and costs.

For Task Requests, the CAO will provide VLC Members with a Task Request and VLC Members will provide a response as to whether or not it will support the task, given the level of effort required and funding available to the VLC for the requested Future Vertical Lift support/participation.

For SBIR Phase III projects, the Government will provide the CAO with a request for proposal for an identified VLC member for the purposes continuing R&D efforts as a SBIR Phase III project under this OTA for an effort that was previously competed and performed via a SBIR Phase I and/or Phase II contract.

D. Goals/Objectives

The following goals/objectives will be pursued within the execution of the OTA:

- a. Provide a mechanism to engage industry and academia concerning government priorities, programs, and planning processes.
- b. Openly present and discuss information that is used by the Government in the course of detailed and higher level planning and to receive and discuss information from industry. Such information may include, among other topics, military capability gaps and needs.
- c. Openly collaborate among academia, industry, and the Government to better inform the Government on the technological state of the art as well as emerging technologies in the private sector. Additionally, industry will achieve a better understanding of the Department's current and emerging operational and technology needs in the vertical lift aviation sector.
- d. Improve this industrial sector by facilitating and easing market entry for small business, non-traditional firms, and academic institutions into the vertical lift aviation defense market.
- e. Facilitate opportunities for new cooperation, collaboration, and teaming opportunities, as appropriate, in the interest of innovation and technology advancement.

- f. Enhance exposure and awareness of new, alternative, and competing concepts and technologies to government representatives and subject matter experts.
- g. Deliberately identify and mature emerging technologies to assess future value, and selectively, to mature emerging technologies of interest for demonstrations in operationally relevant environments.
- h. Identify and mature vertical lift aviation technologies that may improve the performance attributes of current vertical lift platforms, such as reliability, range, speed, safety, and survivability.
- i. Identify and mature concepts and technology related to the development of integrated systems, subsystems, and packages that may improve mission performance, such as reduction of pilot workload, improved situational awareness.
- j. Identify and mature engineering concepts and tools that facilitate concept development, maturation, transition to design, and increase the fidelity of such tools in terms of higher predictability of design performance.
- k. Conduct technology development and maturation in a manner that enables effective technology transition to in-service programs as well as future concepts/programs. Ensure early consideration of life cycle support aspects such as affordability, manufacturability, sustainment, HSI, and training.

#### E. Reports

The VLC member organizations conducting Project Task Assignments in accordance with this Agreement shall maintain records of the activities performed and funding expended under the Project Task Assignments and the results of any studies, analyses, tests and other investigations conducted. Project Agreement Awardees shall submit the following reports to the CAO and AOR for the respective projects:

- Quarterly Reports: The report will have two major sections:
  - i. Technical Status Report. The Technical Status Report shall provide an assessment of the technical progress to date and report on problems, technical issues or major developments during the reporting period. The Annual Technical Report shall be submitted in lieu of a Quarterly Technical Status Report for the 4<sup>th</sup> Quarter. Each of the topics described below shall be addressed for each project:
    - 1. A description of Project products/documents and deliverables.
    - 2. Description of key results and/or findings and conclusions regarding deficiencies, approaches, methodologies, techniques, practices, technical barriers, and design solutions.
    - 3. Test results and discussion thereof to include any supporting spreadsheets or data.
    - 4. An assessment of schedule status by tasks and plans for the next reporting period.
    - 5. Documentation of nontraditional participation.
  - ii. Business/Financial Status Report. The Business/Financial Status Report shall contain financial information on each project in which resources were expended in that quarter. The report shall include a summary of the following for each project:
    - 1. The total budgeted dollars by project.
    - 2. Total funds planned and expended (cost and cost share separately identified), by Project, for the quarter; cumulative funds planned and expended to date and the percentage of total funds spent to date along with a statement whether or not remaining funds are sufficient to complete the effort. If the funds are not sufficient a recovery plan shall be provided.
    - 3. Percentage of work completed, by tasks during the quarter, and cumulative percentage of total effort completed to date.
- Annual Technical Reports: Annual technical reports are required for projects that are more than one year in duration. This report will provide a concise and factual discussion of significant accomplishment(s) and progress during the year covered by the report. Each of the topics described below shall be addressed for the project performed:

- i. A comparison of actual accomplishments with the goals and objectives of the project established for the period.
- ii. Reasons why established goals and objectives were not met, if appropriate.
- iii. A cumulative chronological list of written publications in technical journals. Include those in press as well as manuscripts in preparation and planned for later submission. Indicate likely journals, authors and titles.
- iv. Papers presented at meetings, conferences, seminars, etc.
- v. New discoveries, inventions or patent disclosures and specific applications stemming from the individual project provided that such disclosure shall not compromise the rights of the inventor.

Identification of the reports required for an individual project will be included in the specific RPP, Task Request, or SBIR Phase III request for such project, as appropriate.

#### F. Role and Responsibilities

**Government Responsibilities.** The Government will provide strategic technology development and technical guidance through RPPs, Task Requests, and SBIR Phase III requests. The Government will issue RPPs, Task Requests, and SBIR Phase III Requests to the VLC to solicit projects under the OTA. The Government will be responsible for evaluation, acceptance and selection of the project proposals submitted by VLC member entities. The Government will monitor the technical work performed and technical compliance under each Project Task Assignment. The Government also may (1) directly participate in these collaborative efforts, (2) provide full or partial funding, and (3) share expertise and facilities.

**VLC CAO Responsibilities.** The VLC CAO shall transmit Government RPP, Task Requests, and SBIR Phase III requests to VLC member entity(ies) for proposal submissions. The VLC CAO will provide a cost analysis summary to the Government Agreements Officer (AO) for consideration in the Government's award determination. The VLC CAO shall enter into Project Agreements and Project Task Assignments with VLC members or team of members whose proposal was selected for funding by the Government. VLC shall provide administrative support on the Government-funded Project Agreements and Project Task Assignments. However, the Project Agreement Awardee solely is responsible for performance of the Project. The VLC CAO may participate with the Government in the planning, programming and budgeting of the project.

**VLC Member Entity Responsibilities.** VLC member entities may provide proposals for projects in response to the RPP, Task Requests, and SBIR Phase III requests sent to VLC addressing the Government's requirements. Each VLC member entity with proposals that are selected and funded will perform the agreed activities defined in the Statement of Work contained within their Project Task Assignment. VLC member entities may participate with VLC, through its CAO, and the Government in the planning, programming and budgeting of the project. VLC members may, under a Project Task Assignment, (1) share in the funding either as a Cash Contribution or In-Kind Contribution; (2) contribute their own resources including personnel; and/or (3) under special circumstances, contribute materials, facilities, equipment or instrumentation.

**Objectives of the Parties.** In their collaboration, the Government and VLC, through its CAO, will strive to accomplish the following:

- i) Establish sound technical and programmatic performance goals and objectives based on the needs and requirements of the User
- ii) Create RPP, Task Requests, and SBIR Phase III requests based upon the needs presented by Government customers, technology ideas submitted by VLC and expected available funding from various sources within the DoD.
- iii) Maximize the utilization of Government, industry and academia capabilities.

**Additional Government Participation.** The VLC and the Government agree that other organizations and agencies within the U.S. Government may participate in the collaborative activities through a Memorandum of Agreement or other such arrangement.

## ARTICLE II: TERM

### A. The Term of this Agreement

This Agreement will be available for award of Project Task Assignments from the effective date of this Agreement, which is the date of last signature, to December 28, 2020. Provisions of this Agreement, which, by their express terms or by necessary implication, apply for periods of time other than specified in Article II herein, shall be given effect, notwithstanding this Article.

### B. 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 the OTA or under a specific project, in whole or in part, if the AO determines that a termination is in the Government's interest. Pursuant to Article II.B of the OTA, CAO at the direction of the Agreement Officer may terminate this Agreement or any Project Task Assignments or part of a Project Task Assignment under this Agreement. The CAO shall terminate by delivering to the Project Agreement Awardee through its designated agent 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 CAO, the Project Agreement Awardee shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due:

- (1) Stop work and direct its subawardees to stop work as specified in the notice.
- (2) Place no further subagreements or orders (referred to as orders in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the project.
- (3) Terminate all orders to the extent they relate to the work terminated.
- (4) Assign to the Government, as directed by CAO, all right, title, and interest of Project Agreement Awardee under the orders terminated, in which case the CAO shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- (5) With approval or ratification to the extent required by the CAO, settle all outstanding liabilities and termination settlement proposals arising from the termination of orders; the approval or ratification will be final for purposes of this clause.
- (6) Provide CAO, and/or obtain from subawardees as appropriate, under the terminated portion of the Agreement a transfer of title to the following where applicable and deliver to CAO--
  - (i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and
  - (ii) The completed or partially completed plans, drawings, information, and other property that, if the order had been completed, would have been required to be furnished to CAO.
- (7) Complete performance of any work not terminated, if applicable.
- (8) Take any action that may be necessary, or that CAO may direct, for the protection and preservation of the property related to this project that is in the possession of Project Agreement Awardee or any subawardee and in which the Government has or may acquire an interest.

(9) Use its commercially reasonable efforts to sell, as directed or authorized by CAO, any property of the types referred to under Article II.B. Termination Provisions, (6)(i) and (ii); provided, however, that Project Agreement Awardee

(i) is not required to extend credit to any purchaser and

(ii) may arrange for subawardee who was performing the terminated work to acquire the property under the conditions prescribed by, and at prices approved by, CAO.

(iii) will in no event be required to continue with such efforts for more than 100 days after notice by CAO to sell or dispose of such property.

(10) The Project Agreement Awardee has no obligation to continue to cost share on the terminated Project Task Assignment or terminated portion of the Project Task Assignment.

The proceeds of any transfer or disposition of project property will be applied to reduce any payments to be made by the Government under that particular project, including credited to the price or cost of the work, or paid in any other manner directed by CAO.

The requirement for at least 1/3 cost share of the total project cost by the Project Task Assignment Awardee is assessed prior to award. In the event that during the course of the performance of the Project Task Assignment any of the parties to the Project Task Assignment believe the cost sharing funds available will be insufficient, the Project Task Assignment Awardee shall notify the CAO within twenty-five (25) days of the event that gave rise to the insufficient cost sharing funds. CAO will notify the Government within five (5) days of receiving such notice from the Project Task Assignment Awardee. The Government will determine whether it is in its best interest to either renegotiate the scope and/or terms of the Project Task Assignment to meet the cost share requirement or terminate the Project Task Assignment in whole or in part.

In the event of a termination of the Agreement or any Project Task Assignment, the Government shall have patent rights as described in Article X, Patent Rights, and rights in Data as described in Article XI, Data Rights. Failure of the Parties and Government to agree to an equitable adjustment shall be resolved pursuant to Article VII, Disputes.

#### C. Material Breach by a VLC Member

If a VLC member organization materially fails to comply with the provisions of a Project Task Assignment, CAO, as directed by the AO, after issuance of a Cure Notice, may take one or more of the following actions as appropriate, to the extent the Government has either initiated similar action against CAO or VLC or provided specific direction to CAO or VLC:

- (1) Temporarily withhold payments pending correction of the deficiency by VLC member,
- (2) Disallow all or part of the cost of the activity or action not in compliance,
- (3) Wholly or partly suspend or terminate the current Project Task Assignment,
- (4) Withhold further funding for the Project Task Assignment,
- (5) Take any other legally available remedies.

#### D. Termination Costs

In the event of a termination, Project Agreement Awardee will work with CAO to negotiate in good faith with the Government an equitable reimbursement for work performed prior to termination toward accomplishment of the milestones identified within each Project Task Assignment. Under the OTA, the Government will pay the Government's share of the obligations properly incurred by Project Agreement Awardee prior to termination. Costs

incurred by Project Agreement Awardee during a suspension or after termination of a Milestone are not allowable, except for allowable termination settlement expenses defined in FAR Part 49, unless the AO expressly authorizes them in either the notices of suspension, termination, or subsequently. Other Project Agreement Awardee's costs incurred during a suspension or after termination which are necessary and not reasonably avoidable are allowable if:

- (1) The costs result from obligations which were properly incurred by Project Agreement Awardee before the effective date of the suspension or termination, are not in anticipation of it, and in the case of a termination, are non-cancellable; and
- (2) The costs would be allowable if the Milestone was not suspended or the Project Task Assignment expired normally at the end of the funding period in which the termination takes effect.

#### E. Stop Work Clause

As directed by the Government Agreements Officer, the CAO may, at any time, by written order to the Project Agreement Awardee, require the Project Agreement Awardee to stop all, or any part, of the work called for under any Project Task Assignment for a period of 90 days after the written order is delivered to the Project Agreement Awardee, and for any further period to which the Parties and Government may agree. The order shall be specifically identified as a stop-work order issued under this Article. Upon receipt of the order, the Project Agreement Awardee shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Project Agreement Awardee, or within any extension of that period to which the Parties and Government shall have agreed, the CAO shall either:

- (a) Cancel the stop-work order; or
- (b) Terminate the work covered by the Project Task Assignment.

If a stop work order issued under this clause is canceled, the Project Agreement Awardee shall resume work. The Government, through the CAO, shall make an equitable adjustment in the delivery schedule or Project Task Assignment estimated cost/price, or both, and the Government's share of the Project Task Assignment shall be modified, in writing, accordingly, if—

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

If a stop work order is not canceled and the work covered by the Project Task Assignment is terminated in accordance with Article II, the CAO shall work with the Project Agreement Awardee to negotiate an equitable reimbursement in accordance with Article II (D) – Termination Costs.

- F. Lower Tier Agreements: Project Agreement Awardee shall include Article II, Term, suitably modified to identify the parties, in all lower tier agreements, regardless of tier.

### **ARTICLE III: MANAGEMENT OF THE PROJECT**

#### A. Management and Project Structure

Technical and project management of the coordinated research program established under the OTA and subsequent Project Agreements and Project Task Assignments shall be accomplished through the management structures and processes detailed in this Article.

VLC selects and appoints an agent for the OTA to provide a single point of contact between the VLC, the Government, and the respective designees. This VLC agent is to be called the Consortium Administrative Organization or CAO. The CAO, acting with guidance from the VLC Board, shall be responsible for the overall day to day management of VLC under the OTA, including technical, programmatic, reporting, financial, administrative, and contractual matters.

The VLC has entered into an agreement with Advanced Technology International to serve as the CAO of VLC. Advanced Technology International will engage in overall day to day management of VLC under the guidance of and as designated by the VLC Board, and administer Project Agreements and Project Task Assignments required for performance under the OTA.

#### B. Modifications

With regard to projects the Government determines to fund under this Agreement as a result of the RPP, Task Request, or SBIR Phase III, any Project Agreement Awardee recommendations for modifications, including justifications to support any changes to the funded project, will be documented in a letter and submitted by the Project Agreement Awardee to the CAO with a copy to the Government AOR designated for the particular project. The AO shall be responsible for review and modification or changes to the terms and conditions of the Project Task Assignment. The CAO shall modify Project Agreement(s) and Project Task Assignment(s) in the event of any such modifications or changes to the project.

#### C. Management of Projects

1. Performance of the work on Project Task Assignments is subject to the technical direction of the AOR designated in the Project Task Assignment. For the purposes of this Agreement, technical direction includes the following:
  - a. Direction to the Project Agreement Awardee, which shifts work emphasis between work areas or tasks, requires pursuit of certain lines of inquiry, fills in details or otherwise serves to accomplish the objectives described in the statement of work;
  - b. Guidelines to the Project Agreement Awardee that assist in the interpretation of drawings, specifications or technical portions of work description.
  - c. Review and, where required by the Project Task Assignment, approval of technical reports, drawings, specifications, or technical information to be delivered by the Project Agreement Awardee under the Project Task Assignment.

The AOR shall monitor the Project Agreement Awardee's performance with respect to compliance with the technical requirements of the Project Task Assignment.

2. Technical direction must be within the general scope of work stated in the Project Task Assignment. Technical direction may not be used to
  - a. Assign additional work under the Project Task Assignment;
  - b. Increase or decrease the estimated Project Task Assignment cost, fee (if any), or the time required for the Project Task Assignment performance;
  - c. Change any of the terms, conditions or specifications of the Project Task Assignment; or
  - d. Accept non-conforming work.

As such, no verbal or written request, notice, authorization, direction or order received by the Project Agreement Awardee shall be binding upon the VLC, CAO or Government, or serve as the basis for a change in the Project Task Assignment cost or any other provision of the Project Task Assignment, unless issued (or confirmed) in writing by the CAO Contractual Representative designated in the Project Task Assignment.

3. The Project Agreement Awardee shall immediately notify the CAO Contractual Representative whenever a verbal or written change notification has been received from anyone other than the CAO Contractual Representative, which would affect any of the terms, conditions, cost, schedules, etc. of the Project Task Assignment, and the Project Agreement Awardee is to perform no work or make any changes in response to any such notification or make any claim on the VLC through its CAO or Government, unless the CAO Contractual Representative directs the Project Agreement Awardee, in writing, to implement such change notification.

#### **ARTICLE IV: AGREEMENT ADMINISTRATION**

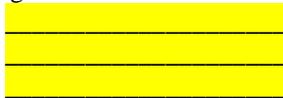
All matters under this Agreement shall be referred to the following representatives of the parties:

**VLC CAO:**

Advanced Technology International  
Gerry Graves, CAO Managing Director  
315 Sigma Drive  
Summerville, SC 29486  
(843) 760-3793  
[gerry.graves@ati.org](mailto:gerry.graves@ati.org)

Advanced Technology International  
Sarah Swain, Senior Contracts Administrator  
315 Sigma Drive  
Summerville, SC 29486  
(843) 760-3545  
[sarah.swain@ati.org](mailto:sarah.swain@ati.org)

**Project Agreement Awardee:**



**Government Technical Manager:**

Bradley R. Miller  
US Army AMRDEC  
Sustainment S&T Focus Area Lead, Aviation Development  
ATTN: RDMR-AD  
Building 5400, Rm B-356  
Redstone Arsenal, AL 35898-5000  
(256) 313-1729 (office)  
[bradley.r.miller12.civ@mail.mil](mailto:bradley.r.miller12.civ@mail.mil)

Each party may change its representatives named in this Article by written notification to the other party.

#### **ARTICLE V: OBLIGATION AND PAYMENT**

**A. Obligation**

Except as specified in Article VII: Disputes, CAO's liability to make payments to Project Agreement Awardee is limited to those funds obligated under the Project Task Assignments.

## B. Payments

B.1 In addition to any other financial reports provided or required, Project Agreement Awardee shall notify CAO immediately if any contribution from Project Agreement Awardee is not made as required.

B.2 Accounting System Requirements: Prior to the submission of invoices, Project Agreement Awardee shall have and maintain an established accounting system which complies with Generally Accepted Accounting Principles (GAAP) and the requirements of this Agreement. Project Agreement Awardee shall ensure that appropriate arrangements have been made for receiving, distributing and accounting for Federal funds under this Agreement. Consistent with this stipulation, an acceptable accounting system will be one in which all cash receipts and disbursements are controlled and documented properly.

B.3 Payable Milestones: Project Agreement Awardee shall segregate and track all individual project costs separately, shall document the accomplishment of each Payable Milestone under each project, and shall compile such documentation for inclusion in the Project Agreement Awardee's Payable Milestones Report, which shall be submitted or otherwise provided to CAO as established on a per project basis.

B.4 Advance Payments for Project Task Assignments: On a per project basis, advance payments may be approved by the AO.

## C. Invoicing Instructions:

### C.1. Payment Method Types

Project Task Assignments will be issued as either a fixed price milestone payment method or a cost reimbursement milestone payment method as described below.

- (a) *Fixed Price Milestone Payment Method*: Payments shall be made in accordance with the Payable Milestone Schedule of each Project Task Assignment, provided the designated AOR has verified compliance with the Statement of Work and accomplishment of the stated effort. The Payable Milestone Schedule may be revised as appropriate and deemed necessary by issuance of a bilateral modification to the Project Task Assignment. Quarterly reviews by the AOR and the CAO will assess the need for revisions to the Payable Milestone Schedule. An acceptable invoice for adjustable fixed price milestone payments is one that (on the invoice or on the Payable Milestone Report):
  - (i) contains the date of invoice and the Base VLC Project Agreement number and Project Task Assignment number;
  - (ii) identifies any associated technical milestones and the progress toward completion of each milestone; and
  - (iii) lists the milestone cost negotiated and contained in each Project Task Assignment
- (b) *Cost Reimbursable Milestone Payment Method (with not to exceed ceiling)*: Payment is contingent upon satisfactory progress toward completion of milestones as delineated in Project Task Assignment. Payment shall be made based on actual costs incurred in completing milestones up to the maximum amount allowable under the applicable Project Task Assignment, provided the designated AOR has verified compliance with the Statement of Work and accomplishment of the stated effort. Per (ii) below, either a Status Report identifying any associated technical tasks and the progress toward completion of each milestone, a Deliverable Report, or a Milestone Report is required concurrent with the invoice. An acceptable invoice for reimbursable payment is one that (on the invoice or on the attached Status, Deliverable, or Milestone Report in accordance with each Project Task Assignment):
  - (i) contains the date of invoice and the Base VLC Project Agreement number and Project Task Assignment number;
  - (ii) identifies any associated technical milestones and the progress toward completion of each milestone;

- (iii) includes a description of supplies and services, labor costs, subcontractor costs, material costs, travel costs, other direct costs, and extended totals;
  - (iv) indicates the current period and cumulative man-hours and costs incurred through the period indicated on the invoice; and
  - (v) contains the following certification statement:

“I certify that the amounts invoiced are for costs incurred in accordance with the agreement, the work reflected has been performed, and prior payment has not been received.”  
Authorized Signature \_\_\_\_\_
- (c) *Cost Plus Fixed Fee Milestone Payment Method (with not to exceed ceiling)*: Payment is contingent upon satisfactory progress toward completion of milestones as delineated in Project Task Assignment. Payment shall be made based on actual costs incurred in completing milestones up to the maximum amount allowable under the applicable Project Task Assignment, provided the designated AOR has verified compliance with the Statement of Work and accomplishment of the stated effort. The Project Agreement Awardee will normally fund any costs incurred above this maximum amount. Either a Status Report identifying any associated technical tasks and the progress toward completion of each milestone, a Deliverable Report, or a Milestone Report is required concurrent with the invoice. An acceptable invoice for reimbursable payment is one that (on the invoice or on the attached Status, Deliverable, or Milestone Report in accordance with each Project Task Assignment):
- (i) contains the date of invoice and the Base VLC Project Agreement number and Project Task Assignment number;
  - (ii) identifies any associated technical milestones and the progress toward completion of each milestone;
  - (iii) includes a description of supplies and services, labor costs, subcontractor costs, material costs, travel costs, other direct costs, fixed fee and extended totals;
  - (iv) indicates the current period and cumulative man-hours and costs incurred through the period indicated on the invoice; and
  - (v) contains the following certification statement:

“I certify that the amounts invoiced are for costs incurred in accordance with the agreement, the work reflected has been performed, and prior payment has not been received.”  
Authorized Signature \_\_\_\_\_
- (d) *Cost Reimbursable, Cost Sharing Milestone Payment Method (with not to exceed ceiling)*: Payment is contingent upon satisfactory progress toward completion of milestones as delineated in Project Task Assignment and acceptable cost share. Payment shall be made based on actual costs incurred in completing milestones up to the maximum amount allowable under the applicable Project Task Assignment, provided the designated AOR has verified compliance with the Statement of Work and accomplishment of the stated effort. Per (ii) below, either a Status Report identifying any associated technical tasks and the progress toward completion of each milestone, a Deliverable Report, or a Milestone Report is required concurrent with the invoice. An acceptable invoice for reimbursable payment is one that (on the invoice or on the attached Status, Deliverable, or Milestone Report in accordance with each Project Task Assignment):
- (i) contains the date of invoice and the Base VLC Project Agreement number and Project Task Assignment number;
  - (ii) identifies any associated technical milestones and the progress toward completion of each milestone;
  - (iii) includes a report of the cost share expended towards the accomplishment of the SOW tasks and/or milestones. This cost share report may be attached to the invoice if contractor practices make inclusion of such information on the invoice itself impractical. If the cost share report is separate from the invoice, it must be signed by an authorized representative. This cost share report must contain a breakout of the cost share by cost element similar to the level of detail required on the invoice and any in-kind contributions. The preferred method of reporting cost share is to provide an invoice for actual

cost incurred with a value for the cost shared amount and the value to be reimbursed by the Government through the CAO;

- (iv) includes a description of supplies and services, labor costs, subcontractor costs, material costs, travel costs, other direct costs, and extended totals;
- (v) indicates the current period and cumulative man-hours and costs incurred through the period indicated on the invoice; and
- (vi) contains the following certification statement:

“I certify that the amounts invoiced are for costs incurred in accordance with the agreement, the work reflected has been performed, and prior payment has not been received.”

Authorized Signature \_\_\_\_\_

### C.2. Submission of Invoices

Invoices may be submitted no more frequently than monthly. The Project Agreement Awardee shall submit invoices and any necessary supporting documentation via email to [vlc-invoices@ati.org](mailto:vlc-invoices@ati.org). The Project Agreement Awardee's final invoice (completion invoice) will be clearly indicated as such and shall indicate the cumulative amounts incurred and billed to completion, and a written certification of the total hours expended. Actual project costs incurred and cost share performance, if applicable, of each project shall be reported and reviewed each quarter.

### C.3. Payment Terms

Payment terms are NET 30 days after CAO's receipt of an acceptable invoice. An acceptable invoice is one that meets the conditions described in Article V Section C.1 Payment Method Types.

**Advance Payments:** If the AO has approved advance payments, there will be a requirement to establish a separate interest bearing account. The Project Agreement Awardee shall set up and maintain funds in a separate interest bearing account unless one of the following applies:

- (1) Project Agreement Awardee receives less than \$120,000 in Federal awards per year;
- (2) The best reasonably available interest bearing account would not expect to earn interest in excess of \$250 per year on such cash advances;
- (3) The depository would require an average or minimum balance so high that it would not be feasible within the expected cash resources for the project; or
- (4) The advance payments are made one time to reduce financing costs for large up-front expenditures and the fund will not remain in Project Agreement Awardee's account for any significant period of time.

Where a separate interest bearing account is set up, interest earned should be remitted annually to CAO. CAO shall forward the funds to the Government.

**C.4 Limitation of Funds:** Except as set forth in Article VII, CAO's financial liability will not exceed the amount made available by the Government to CAO and obligated by CAO under the Project Task Assignment for Project Agreement Awardee's projects under the OTA.

**C.5 Financial Records and Reports:** Project Agreement Awardee shall maintain adequate records to account for Federal funds received under this Agreement and shall maintain adequate records to account for Project Task Assignment funding provided under this Agreement, should cost sharing procedures be implemented for funding a particular project. Project Agreement Awardee shall ensure that, for each project, Project Agreement Awardee's relevant financial records are available and subject to examination or audit by the Government on behalf of the Army Contracting Command for a period not to exceed three (3) years after final payment of the Project Agreement Awardee's project award. The AO or designee shall have direct access to sufficient records and information of

Project Agreement Awardee to ensure full accountability for all funding under this Agreement. Such audit, examination or access shall be performed during business hours on business days upon prior written notice and shall be subject to the security requirements of the audited Party. Any audit required during the course of the program may be conducted by the Government using Government auditors or, at the request of Project Agreement Awardee through CAO to the Government, by Project Agreement Awardee's external CPA accounting firm at the expense of that Project Agreement Awardee.

#### ARTICLE VI: NONTRADITIONAL DEFENSE CONTRACTORS/COST SHARING

In accordance with provisions of 10 USC 2371b, Section 815 of the 2016 National Defense Authorization Act, P.L. 114-92, which provides the Department of Defense (DoD) authority to enter into transactions *other than* contracts, grants, or cooperative agreements, the Department of Defense (DoD) has the 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 Department of Defense, or the improvement of platforms, systems, components, or materials in use by the armed forces. Section 815 revised the definition for the term 'nontraditional defense contractor' as defined in Article I.B., Definitions.

Each VLC Member Organization must meet the definition of a Nontraditional Defense Contractor or have at least one Nontraditional Defense Contractor participating to a significant extent in the performance of an awarded Project Task Assignment. Examples of what might be considered a significant extent or significant contribution include, but may not be limited to supplying new key technologies or products, accomplishing a significant amount of the effort, or in some other way causing a material reduction in the cost or schedule or increase in the performance.

If significant Nontraditional Defense Contractor participation cannot be fulfilled, the Member Organization must provide at least one third cost share of the value of the Project Task Assignment awarded to the Member Organization. Proposals that fail to comply with this requirement will not be awarded under the OTA.

Throughout the period of performance of any Project Task Assignment, the Government AO and AOR will actively monitor Nontraditional Defense Contractor participation and/or cost sharing to ensure compliance with this provision in accordance with implementation guidance from HQDA and/or OSD. Contractors will be given the opportunity to become compliant with the guidance should they be found non-compliant. Failure to comply may result in termination.

#### ARTICLE VII: DISPUTES

##### A. General

For the purposes of this Article, "Parties" means the CAO, the Project Agreement Awardee and the Government where collectively identified and "Party" where each entity is individually identified. The Parties shall communicate with one another in good faith and in a timely and cooperative manner when raising issues under this Article.

##### B. Dispute Resolution Procedures

Any disagreement, claim or dispute between the Army Contracting Command and VLC and/or the individual VLC member entity(ies) Agreement 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. In no event shall a dispute, disagreement or misunderstanding which arose more than three (3) months prior to the notification made under this article constitute the basis for relief under this article unless the US Army Contracting Command, Army Contracting Command – New Jersey, Emerging Technologies Contracting Center's Center Director, in the interest of justice waives this requirement.

Failing resolution by mutual agreement, the aggrieved Party shall document the dispute, disagreement, or misunderstanding by notifying the other Party (through the respective AO or CAO, as the case may be) 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 ten (10) working days after providing notice to the other Party, the aggrieved Party may, in writing, request a decision by the Center Director, Emerging Technologies Contracting Center. The other Party shall submit a written position on the matter(s) in dispute within thirty (30) calendar days after being notified that a decision has been requested. The Center Director, Emerging Technologies Contracting Center, will conduct a review of the matter(s) in dispute and render a decision in writing within thirty (30) calendar days of receipt of such position. Any such decision is final and binding, unless a Party shall, within thirty (30) calendar days request further review as provided by this article.

If requested within thirty (30) calendar days of the Center Director's decision, further review will be conducted by the Chairman of the VLC Board and the Army Contracting Command - New Jersey Associate Director overseeing the Emerging Technologies Contracting Center. In the event of a decision, or in absence of a decision within sixty (60) calendar days of referral to the Chairman of the VLC Board and the Army Contracting Command – New Jersey Associate Director overseeing the Emerging Technologies Contracting Center (or such other period as agreed to by the parties), either party may pursue any right or remedy in any Federal Tribunal of Competent Jurisdiction. Alternatively, the parties may agree to explore and establish an Alternate Disputes Resolution procedure to resolve this dispute or an aggrieved Party may decide to bypass further review by the Chair of the VLC Executive Committee and the Army Contracting Command – New Jersey Associate Director overseeing the Emerging Technologies Contracting Center and pursue any right or remedy in any Federal Tribunal of Competent Jurisdiction.

### C. Limitation of Liability and Damages

In no event shall the liability of the Government, VLC, CAO, the VLC Project Agreement Awardee, VLC member entity or any other entity performing research activities under this Agreement, exceed the amount obligated by the Government or the committed Cash Contribution or In-kind Contribution by a VLC member organization specific to the Project Task Assignment or Task Request under which the dispute arises, unless such dispute resulted from a request for equitable adjustment relating to a change in the performance or scope of the agreement or for termination settlement expenses.

No Party shall be liable to any other Party for consequential, punitive, special, exemplary 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, excluding liability for misuse or unauthorized disclosure of intellectual property, 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.

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 or gross negligence.

The award of a project or Project Agreement to one or more VLC Members under the OTA shall not create an organizational conflict of interest within the meaning of 48 C.F.R. Parts 209 and 252. No liability will transfer from one VLC Member to another VLC Member unless stipulated in the Project Task Assignment and agreed to by the affected VLC Members. All responsibility, financial and otherwise, for a particular Project Task Assignment shall be limited to the Project Agreement Awardees.

Notwithstanding the other provisions of this article, this waiver of liability shall not be applicable to:

- (a) Actions pursued between the VLC through its CAO and the Government regarding a material breach or nonpayment of funds;
- (b) Actions for damages caused by willful misconduct or gross negligence; and
- (c) Intellectual property claims related to misuse of unauthorized disclosure of intellectual property.

Under no circumstances will the above enumerated exceptions to the Waiver of Liability be interpreted to apply the Contract Disputes Act to the OTA or this Agreement, or in any way cause the OTA or this Agreement to be subject to any terms of or regulations related to the Contract Disputes Act.

## ARTICLE VIII: CONFIDENTIAL INFORMATION

### 8.1 Definitions

8.1.1 “Disclosing Party” means VLC, CAO, Project Agreement Awardee, or the Government who discloses Confidential Information as contemplated by the subsequent Paragraphs.

8.1.2 “Receiving Party” means VLC, CAO, Project Agreement Awardee, or the Government who receives Confidential Information disclosed by a Disclosing Party.

8.1.3 “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 (30) calendar days after such disclosure, delivers to the Receiving Party a written document or documents describing the material or information and indicating that it is confidential or a Trade Secret, provided that any disclosure of information by the Receiving Party prior to receipt of such notice shall not constitute a breach by the Receiving Party of its obligations under this Paragraph. “Confidential Information” includes any information and materials considered a Trade Secret by Project Agreement Awardee. “Trade Secret” means all forms and types of financial, business, scientific, technical, economic, or engineering or otherwise proprietary information, including, but not limited to, patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if -

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

8.2 Exchange of Information: Neither the Government nor VLC on behalf of the VLC member entities or Project Agreement Awardees nor the CAO shall be obligated to transfer Confidential Information independently developed by the Government or the VLC member entities or Project Agreement Awardees or the CAO absent an express written agreement between the Parties involved in the exchange providing the terms and conditions for such disclosure.

8.3 Authorized Disclosure: The Receiving Party agrees, to the extent permitted by law, that Confidential Information 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 shall not be disclosed, divulged, or otherwise communicated by it to third parties or used by it for any purposes other than in connection with specified project efforts and the licenses granted in Article 8.2 above. The following information will not be considered confidential:

- (a) Are received or become available without restriction to the Receiving Party under a proper, separate agreement,
- (b) Are not identified with a suitable notice or legend per Article VII, "Confidential Information," herein,
- (c) 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,
- (d) Are or later become part of the public domain through no fault of the Receiving Party,

- (e) Are received by the Receiving Party from a third party having no obligation of confidentiality to the Disclosing Party that made the disclosure,
- (f) Are developed independently by the Receiving Party without use of Confidential Information as evidenced by written records,
- (g) 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.

8.4 Return of Proprietary Information: Upon the request of Disclosing Party, the Receiving Party shall promptly return all copies and other tangible manifestations of the Confidential Information disclosed. As used in this section, tangible manifestations include human readable media as well as magnetic and digital storage media.

8.5 Term: The obligations of the Receiving Party under this Article shall continue for a period of ten (10) years after the expiration or termination of the Proprietary Information Agreement put in place pursuant to Article 8.2 above; provided, however, that in the case of a VLC member organization that withdraws, or is deemed to have withdrawn from the VLC by failing to take action to either withdraw or meet the membership requirements such as dues payment, the Receiving Party's obligations with respect to such VLC member organizations' Proprietary Information shall continue only for a period of five (5) years after the effective date of such VLC member organizations' withdrawal from the VLC.

8.6 Project Agreement Awardee shall flow down the requirements of this Article VIII, in a manner that is at least as restrictive as this Agreement, to their respective personnel, member entities, agents, subawardees (including employees) at all levels, receiving such Confidential Information under this Agreement. None of the Confidential Information will be provided to any person unless such person has a need to know the Confidential Information.

## ARTICLE IX: PUBLICATION AND ACADEMIC RIGHTS

### 9.1 Use of Information.

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

Subject to the provisions of Article VIII, Confidential Information, and Article IX, Publication and Academic Rights at paragraph 9.1.2, and Article XI, Data Rights and Copyrights, Project Agreement Awardee (and its employees) and the Government shall have the right to publish or otherwise disclose information and/or data developed by the Government and/or Project Agreement Awardee under the Project for purposes related to the Project. Project Agreement Awardee and the Government (and its employees) shall include an appropriate acknowledgement of the sponsorship of the Research Projects by the Government and Project Agreement Awardee in such publication or disclosure. The Parties shall have only the right to use, disclose, and exploit any such data and Confidential Information in accordance with the rights held by them pursuant to this Agreement and the OTA. Notwithstanding the above, the Parties shall not be deemed authorized by this paragraph 9.1, alone, to disclose any Confidential Information of the Government or Project Agreement Awardee.

#### 9.1.1 Classified Research Projects.

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

#### 9.1.2 Review or Approval of Technical Information for Public Release.

- (a) At least 35 days prior to the scheduled release date, Project Agreement Awardee shall submit to CAO two copies of the information to be released. In turn, CAO shall submit to the Government AOR two copies of the information to be released.

The Government AOR is hereby designated as the approval authority for the AO for such releases.

(b) Where Project Agreement Awardee is an Academic Research Institution performing fundamental research on campus, Project Agreement Awardee shall provide papers and publications to CAO for provision to the Government AOR for review and comment 35 days prior to formal paper/publication submission. However, if Project Agreement Awardee incorporates into its research results or publications artifacts produced by and provided to Project Agreement Awardee by VLC or CAO on behalf of other (non-educational institution) VLC members (or has authors listed on the paper who are not employees or students of an Academic Research Institution) then the procedures in paragraph (a) above must be followed.

(c) Parties to this Agreement are responsible for assuring that an acknowledgment of government support will appear in any publication of any material based on or developed under this Agreement, using the following acknowledgement terms:

“Effort sponsored by the U.S. Government under Other Transaction number W15QKN-16-9-1001 between Vertical Lift Consortium, Inc. and the Government. The US Government is authorized to reproduce and distribute reprints for Governmental purposes notwithstanding any copyright notation thereon.”

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

Project Agreement Awardee shall flow down these requirements to its subawardees, at all tiers.

9.1.3 Notices. To avoid disclosure of Confidential Information belonging to a VLC member entity or Project Agreement Awardee and/or the Government and the loss of patent rights as a result of premature public disclosure of patentable information, any Project Agreement Awardee that is proposing to publish or disclose such information will provide advance notice of at least forty (40) days to CAO, and identify such other parties as may have an interest in such Confidential Information. CAO shall notify such parties at least thirty-five (35) calendar days prior to any Project Agreement Awardee’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 VLC, through its CAO, who will in turn notify Project Agreement Awardee of any objection to disclosure within this thirty-five (35) day period, or else Project Agreement Awardee shall be deemed authorized to make such disclosure.

9.1.4 Filing of Patent Applications. During the course of any such thirty-five (35) calendar day period, Project Agreement Awardee shall provide notice to CAO as to whether it desires that a patent application be filed on any invention disclosed in such materials, and/or the Government shall provide notice to the AO as to whether the Government desires that a patent application be filed on any invention disclosed in such materials. In the event that Project Agreement Awardee and/or the Government desires that such a patent be filed, Project Agreement Awardee or the Government proposing to publish or disclose such materials agrees to withhold publication and disclosure of such materials until the occurrence of the first of the following:

- (a) Filing of a patent application covering such invention, or
- (b) Written agreement, from the AO and CAO (on behalf of Project Agreement Awardee) that no patentable invention is disclosed in such materials.
- (c) Further, during the course of any such thirty-five (35) calendar day period, Project Agreement Awardee shall notify the AO and the Government through CAO if Project Agreement Awardee believes any of its Confidential Information have been included in the proposed publication or

disclosure and shall identify the specific Confidential Information that need to be removed from such proposed publication. The Government and CAO on behalf of Project Agreement Awardee proposing the publication or disclosure of such materials agrees to remove from the proposed publication or disclosure all such Confidential Information or Trade Secrets so identified by CAO.

## ARTICLE X: PATENT RIGHTS

### A. Definitions

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

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

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

“Subject invention” means any invention of Project Agreement Awardee or its subcontractors of any tier conceived or first actually reduced to practice in the performance of work on a Project Task Assignment under this Agreement as to which fifty percent (50%) or more of the cost of that Project Task Assignment was funded by the Government pursuant to this Agreement. Any invention both conceived and first actually reduced to practice at private expense outside this Agreement, including reduction to practice by simulation if the technology is sufficiently mature to reasonably ensure workability, is not a Subject Invention.

"Background Invention" means any invention, or improvements to any invention, other than a Subject Invention, made by Project Agreement Awardee (or its subcontractors of any tier) that was conceived, designed, developed, produced, and/or actually reduced to practice, outside the scope of work performed under this Agreement.

### B. Allocation of Principal Rights

Project Agreement Awardee, or its subcontractor to the extent such is the proper assignee of the invention, shall retain the entire right, title, and interest throughout the world to each subject invention consistent with the provisions of this Article, Executive Order 12591 and 35 U.S.C § 202. In the event that a Project Agreement Awardee consists of more than one entity or person, those entities or persons may allocate such right, title interest between themselves or others as they may agree in writing. With respect to any subject invention in which Project Agreement Awardee retains title, the Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the United States the subject invention throughout the world, if fifty percent (50%) or more of the cost of the Project Task Assignment under which the subject invention was conceived or reduced to practice, was funded by the Government pursuant to this Agreement. No rights are granted to any persons, parties or entities, including without limitation the Government and other VLC members, in respect of any VLC member inventions or other intellectual property, except as specifically and explicitly provided in the OTA or this Agreement.

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

1. Project Agreement Awardee shall disclose each Subject Invention to CAO within 110 days after the inventor discloses it in writing to his company personnel responsible for patent matters. With prior authorization from the AO, Project Agreement Awardee may notify CAO of its intent to disclose each Subject Invention within 110 days after the inventor discloses in writing to his company personnel responsible for patent matters and shall disclose each Subject Invention to the Government within the same 110 days. The disclosure to CAO, or with prior authorization from the AO, to the Government shall be in the form of a written report and shall identify the Agreement under which the invention was made and the identity of the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify

any publication, sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure.

2. If Project Agreement Awardee determines that it does not intend to retain title to any such invention, Project Agreement Awardee shall notify the Government through CAO, in writing, within nine (9) months of the disclosure pursuant to Paragraph 1 above. However, in any case where publication, sale or public use has initiated the one (1) year statutory period wherein valid patent protection can still be obtained in the United States, the period for such notice may be shortened by the Government through CAO to a date that is no more than sixty-five (65) calendar days prior to the end of such statutory period.

3. Project Agreement Awardee shall file its initial patent application on a Subject Invention to which it elects to retain title within one (1) year after election of title or, if earlier, prior to the end of the statutory period wherein valid patent protection can be obtained in the United States after a publication, or sale, or public use. Project Agreement Awardee may elect to file patent applications in additional countries (including but not limited to the European Patent Office and the Patent Cooperation Treaty) within either ten (10) months of the corresponding initial patent application or six (6) months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications, where such filing has been prohibited by a Secrecy Order.

4. After considering the position of CAO on behalf of the Project Agreement Awardee, a request for extension of the time for disclosure election, and filing under this Article X, paragraph C, may be approved by Army Contracting Command - New Jersey, which Army Contracting Command approval shall not be unreasonably withheld.

#### D. Conditions When the Government May Obtain Title

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

1. If Project Agreement Awardee fails to disclose or elects not to retain title to the Subject Invention within the times specified in paragraph C of this Article X, Patent Rights; provided, that the Government may only request title within sixty (60) calendar days after learning of the failure of Project Agreement Awardee to disclose or elect within the specified times.

2. In those countries in which Project Agreement Awardee fails to file patent applications within the times specified in paragraph C of this Article X, Patent Rights; provided, that if Project Agreement Awardee has filed a patent application in a country after times specified in paragraph C of this Article X, Patent Rights, but prior to its receipt of the written request by the Government through CAO, Project Agreement Awardee shall continue to retain title in that country; or

3. In any country in which Project Agreement Awardee decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceedings on, a patent on a Subject Invention.

#### E. Minimum Rights to Project Agreement Awardee and Protection of Project Agreement Awardee's Right to File.

The Parties agree that:

1. Project Agreement Awardee shall retain a non-exclusive, royalty-free license throughout the world in each Subject Invention to which the Government obtains title, except if Project Agreement Awardee fails to disclose the invention within the times specified in paragraph C of this Article X, Patent Rights. Project Agreement Awardee's license extends to the domestic (including Canada) subsidiaries and affiliates, if any, of Project Agreement Awardee within the corporate structure of which Project Agreement Awardee is a party and includes the right to grant licenses of the same scope to the extent that Project Agreement Awardee was legally obligated to do so at the time the project under the Agreement was funded. The license is transferable only with the approval of the Government, except when transferred to the successor of that part of the business to which the invention pertains. Government approval for license transfer shall not be unreasonably withheld or delayed.

2. Project Agreement Awardee's domestic license may be revoked or modified by the Government to the extent necessary to achieve expeditious practical application of the Subject Invention pursuant to an application for an exclusive license submitted consistent with appropriate provisions at 37 CFR Part 404. This license shall not be revoked in that field of use or the geographical areas in which Project Agreement Awardee has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Government to the extent the Project Agreement Awardee, its licensees, or the subsidiaries or affiliates have failed to achieve practical application in that foreign country.

3. Before revocation or modification of the license, the Government must furnish CAO under the OTA, and CAO shall forward to Project Agreement Awardee, a written notice of the Government's intention to revoke or modify the license, and Project Agreement Awardee shall be allowed thirty (30) calendar days (or such other time as may be authorized for good cause shown) after the notice to show cause why the license should not be revoked or modified.

#### F. Action to Protect the Government's Interest

1. Project Agreement Awardee shall execute or have executed and promptly deliver to CAO all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those Subject Inventions to which Project Agreement Awardee elects to retain title, and (ii) convey title to the Government when requested under paragraph D of this Article X, Patent Rights, and to enable the Government to obtain patent protection throughout the world in that Subject Invention.

2. Project Agreement Awardee agrees to require, by written agreement, that its employees working on Project Task Assignments, other than clerical and non-technical employees, agree to disclose promptly in writing, to personnel identified as responsible for the administration of patent matters each Subject Invention made under this Agreement in order that CAO on behalf of the Project Agreement Awardee can comply with disclosure provisions of the OTA's paragraph C of Article X, Patent Rights, and to execute all papers necessary to file the patent applications on the Subject Invention and to establish the Government's rights in the Subject Invention. Project Agreement Awardee acknowledges and shall instruct its employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

3. Project Agreement Awardee shall notify CAO of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceedings on a patent, in any country, not less than thirty (30) calendar days before the expiration of the response period required by the relevant patent office.

4. Project Agreement Awardee shall include, within the specification of any United States patent application and any patent issuing thereon covering a Subject Invention, the following statement: "This invention was made with U.S. Government support under Agreement No. W15QKN-16-9-1001 awarded by the U.S. Army, Army Contracting Command-New Jersey to Vertical Lift Consortium, Inc. The Government has certain rights in the invention."

#### G. Lower Tier Agreements

Project Agreement Awardee shall include this Article X, Patent Rights, suitably modified to identify the parties, in all lower tier agreements, regardless of tier, for experimental, development, or research work. A higher tier subcontractor shall not as part of the consideration for awarding the subcontract, be required to obtain rights in the subcontractor's Subject Invention.

#### H. Reporting on Utilization of Subject Inventions

Project Agreement Awardee agrees to submit, during the term of the Agreement, periodic reports no more frequently than annually on the utilization of a Subject Invention or on efforts at obtaining such utilization that are being made by Project Agreement Awardee or its licensees or assignees. Such reports shall include, as applicable, information regarding the status of development date of first commercial sale or use, gross royalties received by Project Agreement Awardee and such other data and information as the agency may reasonably specify. Project Agreement

Awardee also agrees to provide additional reports as may be requested by the Government through CAO in connection with any march-in proceedings undertaken by the Government in accordance with paragraph J of this Article X, Patent Rights. Consistent with 35 U.S.C. § 205, CAO agrees it shall not disclose nor grant permission for the Government to disclose such information to persons outside the Government without permission of Project Agreement Awardee.

#### I. Preference for American Industry

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

#### J. March-in Rights

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

1. Such action is necessary because Project Agreement Awardee or assignee has not taken effective steps, consistent with the intent of this Agreement, to achieve practical application of the Subject Invention;
2. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by Project Agreement Awardee, assignee, or their licensees;
3. Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by Project Agreement Awardee, assignee, or licensees; or
4. Such action is necessary because the Agreement required by paragraph (I) of this Article X, Patent Rights, has not been obtained or waived or because a licensee who has the exclusive right to use or sell any Subject Invention in the United States is in the breach of such Agreement.
5. The Government shall follow the procedures set forth at 37 C.F.R. 401.6 in exercising any of its march-in rights under this Paragraph J.

#### K. Opportunity to Cure

Certain provisions of this Article X, Patent Rights, provide that the Government may gain title or license to a Subject Invention by reason of the Project Agreement Awardee's action, or failure to act, within the times required by this Article X, Patent Rights. Prior to claiming such rights (including any rights under Article X, Paragraph J. March-In Rights), the Government will give written notice to VLC, through its CAO, and CAO will convey such written notice to Project Agreement Awardee, of the Government's intent, and afford Project Agreement Awardee a reasonable time to cure such action or failure to act. The length of the cure period will depend on the circumstances, but in no event will be less than sixty (60) days. Project Agreement Awardee may also use the cure period to show good cause why the claiming of such title or right would be inconsistent with the intent of this Agreement in light of the appropriate timing for introduction of the technology in question, the relative funding and participation of the parties in the development, and other factors.

#### L. Background Information

In no event shall the provisions set forth in this Article X apply to any Background Inventions or Patents. Project Agreement Awardee or its subcontractors shall retain the entire right, title, and interest throughout the world to each such Inventions and Patents that each party has brought through VLC to the project issued under this Agreement and the Government shall not have any rights under this Agreement.

#### M. Survival Rights

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

### ARTICLE XI: DATA RIGHTS AND COPYRIGHTS

#### A. General

Rights in technical data under this agreement shall be determined in accordance with the provisions of DFARS Part 227, DFARS 252.227-7013 through DFARS 252.227-7021 and DFARS 252.227-7025 through DFARS 252.227-7030. With respect to 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 its financial contributions toward the development of the technical data is equal to or greater than 50% of the total costs of such development. The Government shall have unlimited rights in technical data that are data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds and Computer software developed exclusively with Government funds. Nothing in this Agreement shall require Project Agreement Awardee to grant the Government a new license, or change any license, or otherwise limit the data rights of a Project Agreement Awardee or its subcontractors, with respect to Data developed prior to the award of or outside of the performance of a project awarded pursuant to this Agreement.

Project Agreement Awardee or subcontractors of any tier reserves the right to protect by copyright original works developed under this Agreement. All such copyrights will be in the name of Project Agreement Awardees or their subcontractors of any tier. Subject to the terms of Article VIII, Confidential Information, Project Agreement Awardee shall grant 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 other than Data developed under this agreement, and to authorize others to do so. Rights of the Government in Data shall be provided in the immediately preceding paragraph. 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, the Party receiving the Data and others acting on its behalf may reproduce, distribute, and prepare derivative works for the sole purpose of carrying out that Party's responsibilities under this Agreement. Project Agreement Awardee is responsible for affixing appropriate markings indicating the rights of the Government on all data and technical data delivered under this Agreement or a Project, subject to the provisions of Article VIII of this Agreement.

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

#### B. Data First Produced by the Government

To the extent that Data first produced by the Government is used by or on behalf of Project Agreement Awardee in the performance of any Project Task Assignment, the Government shall retain its preexisting rights in such Data, including modifications or changes to such Data as part of the performance under the Project Task Assignment. 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 ten (10) years after the development of the information, with the express understanding that during the aforesaid period such Data may be disclosed and used (under suitable protective conditions) by or on behalf of the Government for Government purposes only.

#### C. Prior Technology

In the event it is necessary for the Government to furnish Project Agreement Awardee with Data which existed prior to, or was produced outside of this Agreement, and such Data is so identified with a suitable notice or legend, the

Data will be maintained in confidence and disclosed and used by Project Agreement Awardee only for the purpose of carrying out Project Agreement Awardee's responsibilities under this Agreement. Data protection will include proprietary markings and handling, and the signing of non-disclosure agreements by Project Agreement Awardee's employees and/or its subcontractors' employees. Upon completion of activities under this Agreement, such Data will be disposed of as requested by the Government.

#### D. Project Agreement Awardee's Prior Technology

In the event it is necessary for Project Agreement Awardee to furnish the Government with Data which existed prior to, or was produced outside of, this Agreement, and such Data embodies trade secrets or comprises commercial or financial information which is privileged or confidential, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used by the Government and such Government Contractors or contract employees that the Government may hire on a temporary or periodic basis only for the purpose of carrying out the Government's responsibilities under this Agreement consistent with the provisions of Article VII of this Agreement. Data protection will include proprietary markings and handling, and the signing of non-disclosure agreements by such Government Contractors or contract employees. Project Agreement Awardee, if furnishing Data which existed prior to, or was produced outside of this Agreement, has the right to license such Data to other VLC Members or to entities not a party to this Agreement for a fee and/or royalty payments as determined Project Agreement Awardee. Project Agreement Awardee shall not be obligated to provide Data that existed prior to, or was developed outside of this Agreement to other VLC Members or VLC or the Government. Upon completion of activities under this Agreement, such Data will be disposed of as requested by Project Agreement Awardee.

#### E. Oral and Visual Information

If information which Project Agreement Awardee 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 or CAO, Project Agreement Awardee must within thirty (30) days after such disclosure, deliver to the Government or CAO 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 Government or CAO prior to receipt of such notice shall not constitute a breach by the Government or CAO of its obligations under Article VIII: Confidential Information.

#### F. Disclaimer of Liability

Notwithstanding the above, the Government or CAO 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 A herein; nor
- (b) Information contained in any Data for which disclosure and use is restricted under Section A, if such information is or becomes generally known without breach of the above, is known to or is generated by the Government or CAO independently of carrying out responsibilities under this Agreement, is rightfully received from a third party without restriction, or is included in Data which the members have, or are required to furnish to the Government or CAO without restriction on disclosure and use.

#### G. Marking of Data

Any Data delivered under this Agreement, by Project Agreement Awardee, the Government, or CAO, shall be marked with a suitable notice or legend.

#### H. Lower Tier Agreements

Project Agreement Awardee 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 Vertical Lift Project Agreements, pursuant to this Agreement.

#### I. Other Instances

Notwithstanding Paragraphs in this Article, differing rights in data may be negotiated among the parties to each individual Project Task Assignment on a case by case basis.

#### J. Survival Rights

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

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

## ARTICLE XII: EXPORT CONTROL

### Export Control

#### Export Compliance.

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

Project Agreement Awardee shall include this Article, suitably modified, to identify all Parties, in all lower tier agreements. This Article shall, in turn, be included in all sub-tier subcontracts or other forms of lower tier agreements, regardless of tier.

## ARTICLE XIII: OPSEC

- (a) AT Level I Training. If an anticipated Project Task Assignment requires Project Agreement Awardee employees to perform technical activities, e.g., activities other than administrative tasks, program reviews, demonstrations, or meetings, under the Project Task Assignment in a designated area of performance within a DoD installation, facility or area (herein referred to as “an area of performance”), then all Project Agreement Awardee employees, to include subcontractor employees, requiring access to DOD installation, facilities and controlled access areas shall complete AT Level I awareness training within 30 calendar days after effective date of the Project Task Assignment. Project Agreement Awardee shall submit certificates of completion for each affected Project Agreement Awardee employee and subcontractor employee, to the AOR, within 15 calendar days after completion of training by all employees and subcontractor personnel. AT level I awareness training is available at the following website: <https://atlevel1.dtic.mil/at>.
- (b) Access and General Protection/Security Policy and Procedures. If a Project Task Assignment requires Project Agreement Awardee employees to have an area of performance within an DoD installation, facility or area, Project Agreement Awardee employees and all associated sub-contractors employees shall comply with applicable installation, facility and area commander installation/facility access and local security policies and procedures (provided by government representative). Project Agreement Awardee shall also provide all information required for background checks to meet installation access requirements to be accomplished by installation Provost Marshal Office, Director of Emergency Services or Security Office. Project Agreement Awardee employees must comply with all personal identity verification requirements as directed by DOD, HQDA and/or local policy. In addition to the changes otherwise authorized, should the Force Protection Condition (FPCON) at any individual facility or installation change, the Government may require changes in Project Agreement Awardee’s security matters or processes.
- (c) AT Awareness Training for the Project Task Assignment Awardee Personnel Traveling Overseas. If a Project Task Assignment requires Project Agreement Awardee employees or associated subcontractor employees (“awardee personnel”) to travel overseas, then awardee personnel and awardee’s US based Project Agreement Awardee employees and associated sub-contractor employees shall be made available to

receive government provided area of responsibility specific AT awareness training as directed by AR 525-13. Specific area of responsibility training content is directed by the combatant commander with the unit ATO being the local point of contact.

- (d) iWATCH Training. If a Project Task Assignment requires Project Agreement Awardee employees to have an area of performance within a DoD installation, facility or area, all of the employees of Project Agreement Awardee and all associated sub-contractors shall be briefed on the local iWATCH program (training standards provided by the requiring activity ATO). This locally developed training will be used to inform employees of the types of behavior to watch for and to instruct employees to report suspicious activity to the AOR. This training shall be completed within 30 calendar days of Project Task Assignment award and within 30 calendar days of new employees commencing performance with the results reported to the AOR NLT 15 calendar days after contract award.
- (e) Project Task Assignment Recipient Employees Who Require Access to Government Information Systems. All Project Agreement Awardee employees with access to a government info system must be registered in the ATCTS (Army Training Certification Tracking System) at commencement of services, and must successfully complete the DoD Information Assurance Awareness training prior to access to the IS, and then annually thereafter.
- (f) If a Project Task Assignment requires an OPSEC Standing Operating Procedure/Plan, Project Agreement Awardee shall develop an OPSEC Standing Operating Procedure (SOP)/Plan within 90 calendar days of contract award, to be reviewed and approved by the responsible Government OPSEC officer, per AR 530-1, Operations Security. This SOP/Plan will include the Government's critical information, why it needs to be protected, where it is located, who is responsible for it, and how to protect it. In addition, Project Agreement Awardee shall identify an individual within its organization who will be an OPSEC Coordinator. Project Agreement Awardee will ensure this individual becomes OPSEC Level II certified per AR 530-1.
- (g) If a Project Task Assignment requires OPSEC Training, per AR 530-1, Operations Security, Project Agreement Awardee employees must complete Level I OPSEC training within 30 calendar days of their reporting for duty. All Project Agreement Awardee employees must complete annual OPSEC awareness training.
- (h) If a Project Task Assignment requires Information Assurance (IA)/information technology (IT) training, all Project Agreement Awardee employees and associated sub-contractor employees must complete the DoD IA awareness training before issuance of network access and annually thereafter. All Project Agreement Awardee employees working IA/IT functions must comply with DoD and Army training requirements in DoD 8570.01, DoD 8570.01-M and AR 25-2 within six months of employment.
- (i) If a Project Task Assignment requires information assurance (IA)/information technology (IT) certification, per DoD 8570.01-M , DFARS 252.239.7001 and AR 25-2, Project Agreement Awardee employees supporting IA/IT functions shall be appropriately certified upon contract award. The baseline certification as stipulated in DoD 8570.01-M must be completed upon Project Task Assignment award.
- (j) If a Project Task Assignment requires authorizing Project Agreement Awardee's personnel to accompany US Armed Forces deployed outside the US in contingency operations; humanitarian or peacekeeping operations; or other military operations or exercises, when designated by the combatant commander, DFARS Clause 252.225-7040, Contractor Personnel Authorized to Accompany US Armed Forces Deployed Outside the United States is applicable.
- (k) If a Project Task Assignment requires Performance or Delivery in a Foreign Country, DFARS Clause 252.225-7043, Antiterrorism/Force Protection for Defense Contractors outside the US is applicable. This clause applies to both contingencies and non-contingency support. The key AT requirement is for non-local national Project Agreement Awardee personnel to comply with theater clearance requirements and allows the combatant commander to exercise oversight to ensure Project Agreement Awardee's compliance with combatant commander and subordinate task force commander policies and directives.

- (l) All Project Agreement Awardees shall comply with DFARS 252.204-7012 (DEC 2015): Safeguarding Covered Defense Information and Cyber Incident Reporting when applicable.

The Government will identify Covered Defense Information (CDI) at the Project Task Assignment (PTA) level and the VLC Member will (a) on its enterprise level information systems, implement the security requirements specified by National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171 not later than December 31, 2017 per the requirements of Interim Rule DFARS Clause 252.204-7012 (DEC 2015), and (b) make reasonable best efforts regarding the same for those other areas still requiring analysis, specifically contractor's program unique systems/tools and subcontracts requiring flowdown, as applicable. After completion of such additional analysis, the VLC Member shall notify the DoD Chief Information Officer (CIO) within 30 days of PTA award of the standards which are currently not in compliance at the time of award, and immediately thereafter of any additional security requirements which have not been implemented. The VLC Member will implement such security requirements as do not drive adverse cost or schedule impact. Implementation of requirements that will result in adverse impacts to cost or schedule shall be addressed at the government's discretion by equitable adjustment. Nothing in this paragraph shall be interpreted to foreclose the VLC Member's right to seek alternate means of complying with the security requirements in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171 (as contemplated in DFARS 252.204-7008 (Compliance with Safeguarding Covered Defense Information Controls) and/or DFARS 252.204-7012 (Safeguarding Covered Defense Information and Cyber Incident Reporting)).

- (m) Disposition of Data. All Project Agreement Awardee employees shall ensure the DoD owned information is destroyed/sanitized from Project Agreement Awardee owned media and reported IAW NIST Special Publication (SP) 800-88, Rev. 1, Guidelines for Media Sanitization, and returned to the owning organization upon completion of the Project Task Assignment or as directed by the Agreements Officer through CAO.
- (n) Processing Unclassified Government Information on Information Technology (IT) Systems. Project Agreement Awardee employees shall protect DoD unclassified information IAW DoD Instruction (DoDI) 8582.01, "Security of Unclassified DoD Information on Non-DoD Information Systems."

#### ARTICLE XIV: TITLE AND DISPOSITION OF PROPERTY

##### A. Definitions

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

##### B. Title to Property

No significant items of property are expected to be acquired under this Agreement by Project Agreement Awardee. Title to any item of property valued \$10,000 or less that is acquired by Project Agreement Awardee pursuant to a Project Task Assignment in performance of work under this Agreement shall vest in Project Agreement Awardee upon acquisition with no further obligation of the Parties unless otherwise determined by the Government. Should any item of property with an acquisition value greater than \$10,000 be required, Project Agreement Awardee shall request CAO to obtain prior written approval of the Government if not included in the proposal selected by the Government. Title to this property shall also vest in Project Agreement Awardee upon acquisition. Project Agreement Awardee shall be responsible for the maintenance, repair, protection, and preservation of all such property at its own expense. Property acquired pursuant to this clause shall not be considered as in exchange for services in performance of the project, but shall be considered a Government contribution to the project.

#### ARTICLE XV: ASSIGNMENT OF AGENCY

Neither this Agreement nor any rights or obligations of any party hereunder shall be assigned or otherwise transferred by either party without the prior written consent of the other party except that it is agreed that either party may assign this Agreement to the successors or assignees of a substantial portion of the party's business interests to which this Agreement directly pertains without prior written consent.

#### ARTICLE XVI: ORDER OF PRECEDENCE

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

#### ARTICLE XVII: EXECUTION

This Agreement constitutes the entire agreement of the Parties and supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions among the Parties, whether oral or written, with respect to the subject matter hereof, but does not supersede the Membership Application and Agreement. This Agreement may be revised only by written consent of CAO and the Project Agreement Awardee contractual representatives designated in this Agreement.

#### ARTICLE XVIII: AUTHORIZATION AND CONSENT

Work performed by Project Agreement Awardee under this Agreement is subject to authorization and consent to the use of a patented invention consistent with the principles set forth under 28 U.S.C. 1498.

#### ARTICLE XIX: NATIONAL ROTORCRAFT TECHNOLOGY CENTER FLOW DOWN PROVISION

For those VLC member entities who participate as a lower tier contractor on another VLC member entity's Project Task Assignment in support of the National Rotorcraft Technology Center Program, the lower tier member agrees to abide by the terms and conditions of its own Base VLC Project Agreement executed with the CAO. This does not prohibit the Project Agreement Awardee and the lower tier member from negotiating additional terms and conditions, to include previously negotiated terms and conditions, provided that the negotiated terms and conditions adhere to the flow down provisions from the OTA.

**Attachment I**  
**Assurance of Compliance with Title VI of the Civil Rights Act of 1964**

Statement of Assurance of Compliance with  
Title VI of the Civil Rights Act of 1964  
For VLC Project Agreement Awardees

The \_\_\_\_\_ hereby agrees that it will comply with the provisions  
(*Name of VLC Project Agreement Awardee*)  
of the Title VI Civil Rights Act of 1964 as amended (42 U.S.C 2000-d) and all requirements imposed pursuant thereto,  
to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on  
the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be  
otherwise subjected to discrimination under any Project Agreement for which the Project Agreement Awardee  
receives Federal financial assistance from the Government.

The VLC Project Agreement Awardee agrees that compliance with this assurance constitutes a condition of continued  
receipt of Federal financial assistance, and that it is binding upon the Project Agreement Awardee, its successors,  
transferees and assignees for the period during which such assistance is provided.

The Project Agreement Awardee further recognizes and agrees that the United States shall have the right to seek  
judicial enforcement of this assurance.

The person or persons whose signature(s) appear(s) below is/are authorized to sign this assurance, and commit the  
Project Agreement Awardee to the above provisions.

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Title of Authorized Official

\_\_\_\_\_  
Name of Project Agreement Awardee

\_\_\_\_\_  
Date