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# MEMORANDUM OF AGREEMENT
# FOR THE RELEASE OF
# GOVERNMENT-OWNED OR DEVELOPED SOFTWARE

## Contents

**VULNERABILITY TOOLKIT (VTK) MOA**

1. Distribution of the Vulnerability Tool Kit (VTK) is performed by DSIAC on behalf of AFLCMC/EZJA.

2. The requestor acknowledges that the VTK is not to be used for any purpose other than the contract or CRADA number specified in the model request.

3. The requestor agrees that they will not release or transfer the VTK to anyone without prior written approval from the DSIAC.

4. The requestor agrees to return the VTK to DSIAC upon completion of the work specified in the model request. The requestor may be eligible to retain the VTK if there is additional U.S. Government work, including IRAD, or another U.S. Government contract for which the VTK is required. Contact the DSIAC for additional guidance.

5. The requestor agrees that they may only use VTK within 3 years of a completed, signed, and valid MOA and within an approved contract's period of performance.

6. The requestor agrees that the VTK, or any modified version thereof, shall not be published for profit or in any other manner offered for sale to the U.S. Government and shall not be sold or provided to any other activity or firm. If the VTK is modified using U.S. Government funds, the U.S. Government maintains unlimited rights to the modifications, regardless of if the VTK is the basis of, or incidental to, a contract. The VTK, and modified versions thereof, may be used in the performance of a contract with the U.S. Government but no development charges may be assessed as part of its use.

7. The requestor acknowledges that the U.S. Government is neither liable nor responsible for maintenance, updates, or correction of any defects in the VTK. Suspected software defects, improvement suggestions, or other change requests should be provided to the DSIAC or recorded directly in the DSIAC Software Change Request (SCR) database for submission to the respective VTK Model Managers and Configuration Control Board (CCB).

8. The requestor acknowledges that receipt of the VTK is only for U.S. Government Agencies and their contractors and is export controlled. **The VTK shall not be used for, or made available to, foreign governments nor shall it be used in any contract with a foreign government without the written approval of the appropriate U.S. Government agencies.** Contact the DSIAC for additional guidance.

**AFLCMC/EZJA MOA**

The requested model(s) will be used for the reasons outlined in the model request.

I/we understand and agree to the following:

a. NON-DISCLOSURE AGREEMENT.  The Requester requests some or all of the following from AFLCMC/EZJA:   data, technical data, computer software, computer software documentation, computer programs, source code, firmware, and other information of like kind, type, or quality, either commercial or non-commercial, all of which may be subject to limited rights, restricted rights, government-purpose license rights, patents, copyrights, trade secret rights, or other confidential or proprietary constraints (collectively, the "Data").  In consideration therefore, the Requester agrees:

    1) That the Data shall be used only for government purposes.

    2) To strictly abide by and adhere to any and all restrictive markings placed on the Data, and the Requester shall not knowingly disclose or release the Data to third parties.

    3) That any restrictive markings on the Data shall be included on all copies, modifications, and derivative works, or any parts or portions thereof; in any form, manner or substance, which are produced by the Requester including but not limited to incorporation of the Data into any other data, technical data, computer software, computer software documentation, computer programs, source code, or firmware, or other information of like kind, type or quality.  In all such events, the Requester shall clearly denote where such Data initiates and concludes by use of annotations or other standard markings.

    4) That the U.S. Government is entitled to royalty-free use of the government-owned or -developed software that is released.

    5) Copies of any modifications or enhancements made to the Data must be provided to AFLCMC/EZJA or respective Model Managers for configuration management purposes. It is suggested that this information be provided annually.

    6) The Data will not be used for any purpose other than shown above.  Also, it will not be further released by the Requestor without the prior documented approval of AFLCMC/EZJA.

b. WAIVER OF WARRANTIES AND LIMITATIONS OF DAMAGES AGREEMENT.  The requester and the Approving Authority agree that:

    1) No guaranties, representations, or warranties either expressed or implied shall be construed to exist in any language, provision, or term contained in these materials or in any other documentation provided herewith (all such items are collectively referred to as the "Agreement"), and furthermore, the releasing organization disclaims and the requester waives and excludes any and all warranties of merchantability and any and all warranties of fitness for any particular purpose.

2) The Requester shall obtain from the releasing organization all of the "Data" (defined in the Non-Disclosure Agreement above), or any other products or services contemplated by the Agreement, in an "as is" condition.

3) The Requestor agrees to hold harmless and indemnify the Air Force against any and all loss, liability, cost, or expense arising out of the use of any Data released under this agreement, to include, but not limited to, litigation costs or expenses.

c. The Requester's use of the Data shall not prevent the government from releasing the Data at any point in the future.

d. The Requester shall not offer the released Data or any modified version thereof for resale to the government, in whole or as part or subpart of a government deliverable, without explicitly stating that he is doing so by providing certification documentation (e.g., Section K of the Government Solicitation) to the contracting officer before contract award.

e. The Requester may use the released Data in a contract with the government but understands that the government shall not pay the Requester for rights of use of such Data in performance of government contracts or for the later delivery to the government of such Data.  The Requester may be entitled to compensation for converting, modifying, or enhancing the Data into another form for reproduction and delivery to the government, if authorized under a contract with the government.

f. The Requester is not entitled to any released Data that are subject to national defense security classification or the proprietary rights of others.  The Requester shall report promptly the discovery of any such restricted Data to the USAF release approving authority below, and follow all instructions concerning the use, safeguarding, or return of such Data.  The Requester shall not copy or make future study or use of any released Data later found to be subject to such restrictions.

g. As required, the Requester shall be responsible for compliance with any proscriptions on foreign disclosure of the released Data (contained, for example, in the Department of State International Traffic in Arms Regulations or the Department of Commerce Export Administration Regulations).

h. There may be a fee to cover the copying and shipping of the Data and any documentation.

i. The Requester and the Approving Authority intend that all agreements under this Memorandum of Agreement shall be governed by the laws of the United States of America.

**FATEPEN MOA**

October 25, 2023

**FATEPEN Description**

The Fast Air Target Encounter PENetration Program (FATEPEN) was developed for the Naval Surface Warfare Center, Dahlgren Division (NSWC/DD) by Applied Research Associates, Inc., (ARA), Littleton, Colorado. FATEPEN is copyrighted by ARA.

FATEPEN is a set of fast running algorithms which simulate the penetration of spaced target structures by compact and noncompact fragments at speeds up to 5 km/sec. The model predicts fragment mass loss, velocity loss, and tumbling throughout a target. The mass loss model includes a robust impact fracture model. The fracture model transforms an incident intact warhead fragment into an expanding, multiparticle debris cloud which FATEPEN then tracks through the remaining target structure.

FATEPEN also predicts multiparticle loading and damage to plate structures.

FATEPEN is written in FORTRAN-90, and Visual Basic,[1] and is designed to run on a personal computer running under the WINDOWS XP[2] environment or higher. FATEPEN is maintained for NSWC/DD by Applied Research Associates, Inc., Littleton, Colorado.

The FATEPEN algorithms have been accredited by the JTCG/ME by comparisons between model predictions and test results for a variety of projectile and target combinations. The FATEPEN User's and Analyst's Manuals summarize the algorithms, limitations, and usage of FATEPEN. Extrapolation of FATEPEN to other projectile and target combinations must be validated by experiment or analysis.

**FATEPEN Distribution**

Distribution of FATEPEN is limited to US Federal Government Agencies and their contractors only. All requests for FATEPEN must be referred to the Commander, NSWC/DD, Dahlgren, VA 22448-5100. The FATEPEN software is available through the terms of this limited distribution. The Naval Surface Warfare Center, Dahlgren Division, and Applied Research Associates, Inc. grant a royalty-free, nonexclusive, nontransferable license and right to use, free of charge, with the following terms and conditions:

1. The FATEPEN software (executable and/or source code) will not be released nor disclosed to third parties. It may not be redistributed or transferred without written authorization from the Naval Surface Warfare Center, Dahlgren Division.

2. FATEPEN and the version number used will be referenced in any product or publication for which it was used. Any software modifications or enhancements will be fully described. The Naval Surface Warfare Center, Dahlgren Division and Applied Research Associates, Inc. will also be credited in any product or publication.

3. All configuration management procedures established by the FATEPEN Model Manager (NSWC/DD) will be abided by. Any suggestions for modification or enhancement to the software

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[1] Visual Basic is a copyrighted product of Microsoft Corporation.
[2] Windows XP is a copyrighted product of Microsoft Corporation.

and copies of any modifications or enhancements made to the software will be returned to the FATEPEN Model Manager for possible incorporation in future versions.  If any of the provided modifications or enhancements are incorporated in a future version of FATEPEN, copyright ownership therein will belong to ARA, Inc.

4.   FATEPEN and/or any modified version thereof will not be published for profit or in any manner offered for sale to the Government.  If this software is modified or enhanced using Government funds, the Government owns the results, whether the software is the basis of or incidental to a contract.  The Government shall not pay a second time for this software or the enhanced/modified version thereof.  The software package may be used in a contract with the Government, but no development charge may be made as part of its use.

5.   ARA and the Government are neither liable nor responsible for maintenance, updating or correction of any errors in the software package provided.  Errors detected in the software package will be reported to the FATEPEN Model Manager (NSWC/DD) via the FATEPEN Software Change Request (SCR) system at www.fatepen.com.

6.   The authorized user will own full rights to any database or analysis created with this package.

7.   FATEPEN may not be repackaged as a whole, or in part, nor combined with any other software for purposes of resale without first entering into a separate licensing agreement with ARA for that purpose.

8.   The software is provided as is, without warranty.  In no event shall ARA, the U.S. Federal Government, including NSWC/DD and its contractors, be liable for loss or for any indirect, special, punitive, exemplary, incidental, or consequential damages arising from use, possession, or performance of the software.

9.   The software will not be used for any purpose other than that stated below.

10.  The software package received is intended for domestic use only.  It will not be made available to foreign governments nor used in any contract with a foreign government without express written approval by NSWC/DD and other appropriate U.S. Federal Government agencies.

11.  Upon completion of the contract or use specified below the provided software package will be destroyed.  This software package may be retained by the contractor if there is another contract with the U.S. Federal Government for which this software is required.  A new Memorandum of Agreement must be completed for official transfer to the new contract.

12.  The requested software package(s) will be used for the following purposes.  (Contractors include one or more current U.S. Federal Government contract numbers, and brief summary of contract work below.)

13.  The requestor will not change the name of the model to avoid compliance with other provisions of the agreement.

**PEDIGREE DOCUMENTS MOA (IF REQUESTED)**

1. Distribution of the Vulnerability Tool Kit (VTK) Pedigree Documents are managed by DSIAC on behalf of AFLCMC/EZJA.

2. The requestor acknowledges that the VTK Pedigree Documents are not to be used for any purpose other than the contract or CRADA number specified in the model request.

3. The requestor agrees that they will not release or transfer the VTK Pedigree Documents to anyone without prior written approval from the DSIAC.

4. The requestor agrees to return the VTK Pedigree Documents to DSIAC upon completion of the work specified in the model request. The requestor may be eligible to retain the VTK Pedigree Documents if there is additional DoD work, including IRAD, or another DoD contract for which the VTK Pedigree Documents are required. Contact the DSIAC for additional guidance.

5. The requestor agrees that they may only use the VTK Pedigree Documents within 3 years of a completed, signed, and valid MOA and within an approved contract's period of performance.

6. The requestor agrees that the VTK Pedigree Documents, or any modified version thereof, shall not be published for profit or in any other manner offered for sale to the DoD and shall not be sold or provided to any other activity or firm. If the VTK Pedigree Documents are modified using DoD funds, the DoD maintains unlimited rights to the modifications, regardless of if the VTK Pedigree Documents are the basis of, or incidental to, a contract. The VTK Pedigree Documents, and modified versions thereof, may be used in the performance of a contract with the DoD but no development charges may be assessed as part of its use.

7. The requestor acknowledges that the DoD is neither liable nor responsible for maintenance, updates, or correction of any defects in the VTK Pedigree Documents. Suspected software defects, improvement suggestions, or other change requests should be provided to the DSIAC or recorded directly in the DSIAC Software Change Request (SCR) database for submission to the respective VTK Model Manager and Configuration Control Board (CCB).

8. The requestor acknowledges that the VTK Pedigree Documents contain sensitive technology and information that is classified **SECRET//NOFORN** and that any information released to the requester, in whole or in part, shall be controlled and safeguarded in accordance with the appropriate NISPOM security regulations.

9. The requestor acknowledges that the information received is intended for domestic use only. **The requested information shall not be used** for or **made available to foreign governments nor used in any contract with a foreign government without the written approval of the appropriate U.S. Government agencies.** Contact the DSIAC for further guidance.