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voluntarily submitted to the Department under this part (including Applications, Pre-Applications, other forms, supporting documents and other materials relating to any of the foregoing, and responses to requests for additional information), including, but not limited to, inventions, devices, Technology, know-how, designs, copyrighted information, trade secrets, confidential business information, analyses, test and evaluation results, manuals, videotapes, contracts, letters, facsimile transmissions, electronic mail and other correspondence, financial information and projections, actuarial calculations, liability estimates, insurance quotations, and business and marketing plans. Notwithstanding the foregoing, "SAFETY Act Confidential Information" shall not include any information or data that is in the public domain or becomes part of the public domain by any means other than the violation of this section.

Secretary—The term "Secretary" means the Secretary of Homeland Security as established by section 102 of the Homeland Security Act of 2002.

Seller—The term "Seller" means any person, firm, or other entity that sells or otherwise provides Qualified Anti-Terrorism Technology to any customer(s) and to whom or to which (as appropriate) a Designation and/or Certification has been issued under this part (unless the context requires otherwise).

Technology—The term "Technology" means any product, equipment, service (including support services), device, or technology (including information technology) or any combination of the foregoing. Design services, consulting services, engineering services, software development services, software integration services, threat assessments, vulnerability studies, and other analyses relevant to homeland security may be deemed a Technology under this part.

Under Secretary—The term "Under Secretary" means the Under Secretary for Science and Technology of the Department of Homeland Security.

§ 25.3 Delegation.

All of the Secretary's responsibilities, powers, and functions under the SAFETY Act, except the authority to declare that an act is an Act of Terrorism for purposes of section 865(2) of the SAFETY Act, may be exercised by the Under Secretary for Science and Technology of the Department of Homeland Security or the Under Secretary's designees.

§ 25.4 Designation of qualified anti-terrorism technologies.

(a) *General*. The Under Secretary may Designate as a Qualified Anti-Terrorism Technology for purposes of the protections under the system of litigation and risk management set forth in sections 441–444 of Title 6, United States Code, any qualifying Technology designed, developed, modified, provided or procured for the specific purpose of preventing, detecting, identifying, or deterring acts of terrorism or limiting the harm such acts might otherwise cause.

(b) *Criteria to be Considered*. (1) In determining whether to issue the Designation under paragraph (a) of this section, the Under Secretary may exercise discretion and judgment in considering the following criteria and evaluating the Technology:

(i) Prior United States Government use or demonstrated substantial utility and effectiveness.

(ii) Availability of the Technology for immediate deployment in public and private settings.

(iii) Existence of extraordinarily large or extraordinarily unquantifiable potential third party liability risk exposure to the Seller or other provider of such anti-terrorism Technology.

(iv) Substantial likelihood that such anti-terrorism Technology will not be deployed unless protections under the system of risk management provided under sections 441–444 of title 6, United States Code, are extended.

(v) Magnitude of risk exposure to the public if such anti-terrorism Technology is not deployed.

(vi) Evaluation of all scientific studies that can be feasibly conducted in order to assess the capability of the Technology to substantially reduce risks of harm.

(vii) Anti-terrorism Technology that would be effective in facilitating the

defense against acts of terrorism, including Technologies that prevent, defeat or respond to such acts.

(viii) A determination made by Federal, State, or local officials, that the Technology is appropriate for the purpose of preventing, detecting, identifying or deterring acts of terrorism or limiting the harm such acts might otherwise cause.

(ix) Any other factor that the Under Secretary may consider to be relevant to the determination or to the homeland security of the United States.

(2) The Under Secretary has discretion to give greater weight to some factors over others, and the relative weighting of the various criteria may vary depending upon the particular Technology at issue and the threats that the Technology is designed to address. The Under Secretary may, in his discretion, determine that failure to meet a particular criterion justifies denial of an application under the SAFETY Act. However, the Under Secretary is not required to reject an application that fails to meet one or more of the criteria. The Under Secretary may conclude, after considering all of the relevant criteria and any other relevant factors, that a particular Technology merits Designation as a Qualified Anti-Terrorism Technology even if one or more particular criteria are not satisfied. The Under Secretary's considerations will take into account evolving threats and conditions that give rise to the need for the anti-terrorism Technologies.

(c) *Use of Standards*. From time to time, the Under Secretary may develop, issue, revise, adopt, and recommend technical standards for various categories or components of anti-terrorism Technologies ("Adopted Standards"). In the case of Adopted Standards that are developed by the Department or that the Department has the right or license to reproduce, the Department will make such standards available to the public consistent with necessary protection of sensitive homeland security information. In the case of Adopted Standards that the Department does not have the right or license to reproduce, the Directorate of Science and Technology will publish a list and summaries of such standards and may publish information regarding the sources for obtaining copies of such standards. Compliance with any Adopted Standard or other technical standards that are applicable to a particular anti-terrorism Technology may be considered in determining whether a Technology will be Designated pursuant to paragraph (a) of this section. Depending on whether an Adopted Standard otherwise meets the criteria set forth in section 862 of the Homeland Security Act; 6 U.S.C. 441, the Adopted Standard itself may be deemed a Technology that may be Designated as a Qualified Anti-Terrorism Technology.

(d) *Consideration of Substantial Equivalence*. In considering the criteria in paragraph (b) of this section, or evaluating whether a particular anti-terrorism Technology complies with any Adopted Standard referenced in paragraph (c) of this section, the Under Secretary may consider evidence that the Technology is substantially equivalent to other Technologies ("Predicate Technologies") that previously have been Designated as Qualified Anti-Terrorism Technologies under the SAFETY Act. A Technology may be deemed to be substantially equivalent to a Predicate Technology if:

(1) It has the same intended use as the Predicate Technology; and

(2) It has the same or substantially similar performance or technological characteristics as the Predicate Technology.

(e) *Pre-Application Consultations*. To the extent that he deems it to be appropriate, the Under Secretary may consult with prospective and current SAFETY Act applicants regarding their particular anti-terrorism Technologies. Prospective applicants may request such consultations through the Office of SAFETY Act Implementation. The confidentiality provisions in §25.10 shall be applicable to such consultations.

(f) *Developmental Testing & Evaluation (DT&E) Designations*. With respect to any Technology that is being developed, tested, evaluated, modified or is otherwise being prepared for deployment for the purpose of preventing, detecting, identifying, or deterring acts of terrorism or limiting the harm such acts might otherwise cause, the Under

Secretary may Designate such Technology as a Qualified Anti-Terrorism Technology and make such Technology eligible for the protections under the system of litigation and risk management set forth in sections 441–444 of title 6, United States Code. A Designation made pursuant to this paragraph shall be referred to as a "DT&E Designation," and shall confer all of the rights, privileges and obligations that accompany Designations made pursuant to paragraph (a) of this section except as modified by the terms of this paragraph or the terms of the particular DT&E Designation. The intent of this paragraph is to make eligible for SAFETY Act protections qualifying Technologies that are undergoing testing and evaluation and that may need to be deployed in the field either for developmental testing and evaluation purposes or on an emergency basis, including during a period of heightened risk. DT&E Designations shall describe the subject Technology (in such detail as the Under Secretary deems to be appropriate); identify the Seller of the subject Technology; be limited to the period of time set forth in the applicable DT&E Designation, which in no instance shall exceed a reasonable period for testing or evaluating the Technology (presumptively not longer than 36 months); be terminable by the Under Secretary at any time upon notice to the Seller; be subject to the limitations on the use or deployment of the QATT set forth in the DT&E Designation; and be subject to such other limitations as established by the Under Secretary. The protections associated with a DT&E Designation shall apply only during the period specified in the applicable DT&E Designation. Consent of the Seller of a QATT Designated pursuant to this paragraph will be a condition precedent to the establishment of any deployment or use condition and any other obligation established by the Under Secretary pursuant to this paragraph. Those seeking a DT&E Designation for a QATT pursuant to this paragraph (f) shall follow the procedures for DT&E Designations set forth in the SAFETY Act Application Kit.

§ 25.5 Obligations of seller.

(a) *Liability Insurance Required.* The Seller shall obtain liability insurance of such types and in such amounts as shall be required in the applicable Designation, which shall be the amounts and types certified by the Under Secretary to satisfy otherwise compensable third-party claims arising out of, relating to, or resulting from an Act of Terrorism when Qualified Anti-Terrorism Technologies have been deployed in defense against, response to, or recovery from, such act. The Under Secretary may request at any time that the Seller of a Qualified Anti-Terrorism Technology submit any information that would:

(1) Assist in determining the amount of liability insurance required; or

(2) Show that the Seller or any other provider of Qualified Anti-Terrorism Technology otherwise has met all of the requirements of this section.

(b) *Amount of Liability Insurance.* (1) The Under Secretary may determine the appropriate amounts and types of liability insurance that the Seller will be required to obtain and maintain based on criteria he may establish to satisfy compensable third-party claims arising from, relating to or resulting from an Act of Terrorism. In determining the amount of liability insurance required, the Under Secretary may consider any factor, including, but not limited to, the following:

(i) The particular Technology at issue;

(ii) The amount of liability insurance the Seller maintained prior to application;

(iii) The amount of liability insurance maintained by the Seller for other Technologies or for the Seller's business as a whole;

(iv) The amount of liability insurance typically maintained by Sellers of comparable Technologies;

(v) Information regarding the amount of liability insurance offered on the world market;

(vi) Data and history regarding mass casualty losses;

(vii) The intended use of the Technology; and

(viii) The possible effects of the cost of insurance on the price of the product, and the possible consequences