CUSTOMER CONTRACT REQUIREMENTS
S2MARTS
CUSTOMER CONTRACT 23-05_BOEING_HPNT

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this Contract to the extent indicated below. If this Contract is for the procurement of commercial products and/or commercial services under a Government prime contract, as defined in FAR Part 2.101, Section 3 replaces the requirements of Sections 1 and 2 below. Please note, the requirements below are developed in accordance with Buyer's prime contract and are not modified by Buyer for each individual Seller or statement of work. Seller will remain at all times responsible for providing to any government agency, Buyer, or Buyer's customer, evidence of compliance with the requirements herein or that such requirements are not applicable to the extent satisfactory to the requesting party.

1. FAR Clauses The following contract clauses are incorporated by reference from the Federal Acquisition Regulation and apply to the extent indicated. In all of the following clauses, "Contractor" and "Offeror" mean Seller.

52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (NOV 2021).
Paragraph (b)(2) is deleted. Paragraph (d)(1) is deleted and replaced with the following: "In the event Seller identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or Seller is notified of such by a subcontractor at any tier or any other source, Seller shall report the information in paragraph (d)(2) of this clause via email to Buyer's Authorized Procurement Representative, with the required information in the body of the email.

2. Prime Contract Special Provisions The following prime contract special provisions apply to this purchase order

23-05_BOEING_HPNT Special Provisions .
DEFINITIONS

"Agreements Officer (AO)" means the warranted and named Government agreements officer with authority to enter into, administer, or terminate a Project Order associated with this agreement, and whose concurrence is required before any modifications can be made to this Agreement.

"Agreements Officer's Representative (AOR)" means an individual designated and authorized in writing by the Agreements Officer to perform specific technical or administrative functions on behalf of the Government and in coordination with the Parties of this agreement.

"Buyer's Customer" means NSTXL

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

"Computer Software Documentation" means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provides instructions for using the software.

"Consortium" means the National Security Technology Accelerator (hereinafter referred to as "NSTXL").

"Consortium Member" means the signatories to the NSTXL Principles of Engagement covering NSTXL managed Other Transaction Agreements who are in good standing as a member of the NSTXL consortia.

"Controlled Unclassified Information" means any unclassified information that law, regulation, or government-wide policy requires safeguarding and/or dissemination controls upon.

"Cost Sharing" means the required minimum one-third cost share contributed by a traditional Defense Contractor to be eligible for a Prototype Award when a Non-traditional Defense Contractor is not participating to a significant extent.

"Covered Defense Information" means unclassified controlled technical information or other information, as described in the Controlled Unclassified Information (CUI) Registry at http://www.archives.gov/cui/registry/category-list.html that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Government wide policies, and is (1) marked or otherwise identified in the Project Order, Statement of Work, Task Description Document or Project Deliverable (and applicable documentation) and provided to the Consortium Member(s) by or on behalf of the Government in support of the performance of the Project Order; or (2) collected, developed, received, transmitted, used, or stored by or on behalf of the Consortium Member(s) in support of the performance of the Project Order, Statement of Work, Task Description Document or Project Deliverable.

"Data," means recorded information, regardless of form or method of recording, which includes but is not limited to, technical data, computer software, computer software documentation, and mask works. The term does not include financial, administrative, cost, pricing or management information and does not include inventions.

"Date of Completion" is the earlier of the date on which all work is completed or the date on which the period
of performance ends for each specific Project Order.

"Delivered," "Deliverable" or "Delivery" means (a) required to be formally delivered under this Contract's CDRLs, in compliance with DFARS 215.470, MIL-HDBK-245D and DoD 5010.12-M; and (b) Computer Software executable code embedded in deliverable hardware. Providing access and furnishing outside of (a) or (b) are not "Delivered."

"Developed" as applied to an item, component, or process, means that such item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered "developed," the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component, or process be actually reduced to practice within the meaning of Title 35 of the United States Code.   Developed as applied to Computer Software or Computer Software Documentation means that, (i) a computer program has been successfully operated in a computer and tested to the extent sufficient to demonstrate to reasonable persons skilled in the art that the program can reasonably be expected to perform its intended purpose; (ii) Computer Software, other than computer programs, has been tested or analyzed to the extent sufficient to demonstrate to reasonable persons skilled in the art that the software can reasonably be expected to perform its intended purpose; or (iii) Computer Software Documentation required to be Delivered under an agreement has been written, in any medium, in sufficient detail to comply with requirements under that agreement.

"Development": means the systematic use, under whatever name, of scientific and technical knowledge in the design, development, test, or evaluation of 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 function of design engineering, prototyping and engineering testing.

"Form, Fit and Function Data" means Technical Data that describes the required overall physical, functional and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

"Government Furnished Property" means property in the possession of, or directly acquired by, the Government and subsequently furnished to the PROTOTYPE LEVEL PERFORMER for performance of a contract.
Government-furnished property includes, but is not limited to, spares and property furnished for repair, maintenance, overhaul, or modification.

"Government Purpose" means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose Data for commercial purposes or authorize others to do so.

"Government Purpose Rights" ("GPR") means the rights to: (a) Use, modify, reproduce, release, perform, display, or disclose Technical Data, Computer Software, or Computer Software Documentation within the Government without restriction; and

(b) Release or disclose Technical Data, Computer Software, or Computer Software Documentation outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that Technical Data, Computer Software, or Computer Software Documentation for United States government purposes.

"Government Technical Representative" means a Government employee charged with oversight of an individual Project Order, and responsible for reporting status and findings to the Agreement Officer's Representative (AOR).

"Intellectual Property" ("IP") means any invention, discovery, trade secret, technology, scientific or technological development, computer software, or other form of expression that is in tangible form. Intellectual Property may be protected by patent, trademark, or copyright laws or it may be protected as a trade secret and/or marked with an IP legend ©, ®, TM, PATENT or License.

"Invention," as used in this Agreement, means any innovation or discovery that is or may be patentable or otherwise protectable under title 35 of the United States Code (U.S.C.).

"Joint Certification Program" means a United States / Canadian contractor has been granted access to Department of Defense/Department of National Defense unclassified export controlled technical data/ critical technology on an equally favorable basis in accordance with DODI 5320.24 "Withholding of Unclassified Technical Data and Technology from Public Disclosure" and Canadian Technical Data Control Regulations.

"Limited Rights" means the rights to use, modify, reproduce, release, perform, display, or disclose Data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the Data outside the Government, use the Data for manufacture, or authorize the Data to be used by another party, except that the Government may reproduce, release, or disclose such Data or authorize the use or reproduction of the Data by persons outside the Government if-
 (i) The reproduction, release, disclosure, or use is-
  (A) Necessary for emergency repair and overhaul; or
  (B) A release or disclosure to-
   (1) A Covered Government Support Contractor in performance of its covered Government support contract for use, modification, reproduction, performance, display, or release or disclosure to a person authorized to receive Limited Rights Data; or
   (2) A foreign government, of Data other than detailed manufacturing or process data,
   when use of such Data by the foreign government is in the interest of the Government
   and is required for evaluation or informational purposes;
 (ii) The recipient of the Data is subject to a prohibition on the further reproduction, release, disclosure, or use of the Data; and
 (iii) The Consortium, prototype level performer, or sub-agreement holder asserting the restriction
  is notified of such reproduction, release, disclosure, or use.

"Milestone" or "Payable Milestone" means a schedule event signifying the completion of a major deliverable or a set of related deliverables. A milestone that has been completed (as determined by the Government AOR) by a Project Order awardee will be approved for payment. This approved payment will represent a predetermined dollar amount in relation to performance of a particular Project Order under this Agreement.

"Patent" is a property right granted by the US Government, which gives the holder the exclusive right to exclude others from the manufacture, use and sale of the subject invention in the United States for a defined period of time. As property, the patent may be sold or assigned, pledged, mortgaged, licensed, willed, or donated, and the subject of contracts and agreements.

"PERFORMER AGREEMENT" or "Agreement" means this agreement between NSTXL and PROTOTYPE LEVEL PERFORMER, whose project proposal has been selected by the Government, in support of the Prototype Project.

"Practical Application" as used in this Agreement, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in case of a machine or system; and, in each case, under such conditions as to establish that the invention, software, or related Data is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public or to the Government on reasonable terms.

"Project Order" means the Government document(s) issued to NSTXL reflecting the Government's decision to fund all or part of a selected proposal submitted in response to a Request for Solutions. The Project Order will identify the Prototype Project, the period of performance, the Statement of Work, Project Deliverable or Task Description Document, and the approved payment terms and conditions. The Project Order formalizes the scope of work and terms and conditions for performance by, and payment to, the Consortium Member as facilitated by NSTXL.

"Proposal" means the proposal(s) submitted by a Consortium Member (or Performer) in response to a request issued by the Government for the consideration, negotiation and acceptance between the Government and the Performer leading to a Project Order to be performed by the Consortium Member(s).

"Proprietary Information" means information, materials and Data which are designated as proprietary in writing by the Consortium and/or Performer, whether by letter or by use of an appropriate stamp or legend, prior to or at the same time any such information, materials or Data are disclosed to the Government. Notwithstanding the foregoing, materials, information or Data which are orally, visually, or electronically disclosed, or are disclosed in writing without an appropriate letter, stamp, or legend, shall constitute Proprietary Information if the Consortium, within thirty (30) calendar days after such disclosure, delivers to the Government a written document or documents describing the material, information or Data and indicating that it is proprietary, provided that any disclosure of information by the Government prior to receipt of such notice shall not constitute a breach by the Government of its obligations to protect Proprietary Information.

"Proprietary Information" means information, materials and Data which are designated as proprietary in writing by the Consortium and/or Performer, whether by letter or by use of an appropriate stamp or legend, prior to or at the same time any such information, materials or Data are disclosed to the Government. Notwithstanding the foregoing, materials, information or Data which are orally, visually, or electronically disclosed, or are disclosed in writing without an appropriate letter, stamp, or legend, shall constitute Proprietary Information if the Consortium, within thirty (30) calendar days after such disclosure, Delivers to the Government a written document or documents describing the material, information or Data and indicating that it is proprietary, provided that any disclosure of information by the Government prior to receipt of such notice shall not constitute a breach by the Government of its obligations to protect Proprietary Information.

"Prototype" means a physical or virtual model used to evaluate the technical or manufacturing feasibility or military utility of a technology, process, concept, end item, or system.

"Prototype level performer" or "Performer" means Buyer.

"Prototype Project" in the context of meeting the Other Transaction Authority is as follows: a prototype project addresses a proof of concept, model, reverse engineering to address obsolescence, pilot, novel application of commercial technologies for defense purposes, agile development activity, creation, design, development, demonstration of technical or operational utility, or combinations of the foregoing. A process, including a business process, may be the subject of a prototype project.

"Restricted Rights," apply only to non-commercial Computer Software and mean the Government's right to-

(i) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time shared unless otherwise permitted by this Agreement;

(ii) Transfer a computer program to another Government agency without the further permission of the Contractor if the transferor destroys all copies of the program and related Computer Software Documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this clause;

(iii) Make the minimum number of copies of the Computer Software required for safekeeping (archive), backup, or modification purposes;

(iv) Modify Computer Software provided that the Government may –

(A) Use the modified software only as provided in paragraphs (i) and (iii) of this definition; and

(B) Not release or disclose the modified software except as provided in paragraphs (ii), (v), (vi) and

(vii) of this definition;

(v) Permit contractors or subcontractors performing service contracts (as defined in 37.101 of the Federal Acquisition Regulation) in support of this or a related contract to use Computer Software to diagnose and correct deficiencies in a computer program, to modify Computer Software to enable a computer program to be combined with, adapted to, or merged with other computer programs or when necessary to respond to urgent tactical situations, provided that –

(A) The Government notifies the party which has granted restricted rights that a release

or disclosure to Particular contractors or subcontractors was made;

(B) Such contractors or subcontractors are subject to the use and non-disclosure agreement at 227.7103-7 of the DFARS Supplement or are Government contractors receiving access to the Computer Software for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends;

(C) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the Computer Software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (iv) of this definition for any other purpose; and

(D) Such use is subject to the limitations in paragraphs (i) through (iii) of this definition;

(vi) Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use the Computer Software when necessary to perform the repairs or overhaul, or to modify the Computer Software to reflect the repairs or overhaul made, provided that –

(A) The intended recipient is subject to the use and non-disclosure agreement at DFARS 227.7103-7 or is a Government contractor receiving access to the software for performance of a Government contractor receiving access to the Computer Software for performance of a Government contract that contains a clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends;

(B) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the the Computer Software or use the Computer Software decompiled, dissembled, or reversed engineered by the Government pursuant o paragraph (iv) of this definition, for any other purpose; and

(vii) Permit covered Government support contractors in the performance of covered Government support contracts that contain the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, to use, modify, reproduce, perform, display, or release or disclose the Computer Software to a person authorized to receive restricted rights Computer Software, provided that –

(A) The Government shall not permit the covered Government support contractor to decompile,

Disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse Engineered by the Government pursuant to paragraph (iv) of this definition, for any other purpose; and

(B) Such use is subject to the limitations in paragraphs (i) through (iv) of this definition.

"Statement of Work (SOW)" means a Performer submitted and Government accepted technical document which defines the specific activities, deliverables or milestones required to be performed under the Project Order under the conditions of the Performer's Proposal.

"Subject Invention" means those inventions conceived or first actually reduced to practice under this Agreement.

"Task Description Document" (TDD) means a performer provided technical document or specification outlining the project tasks to be performed along with schedule milestones and delivery dates required for successful completion. Once selected by the Government as a viable solution, the proposed TDD may be incorporated into the resultant OTA with any mutually agreed upon modifications or changes prior to award. The TDD may be referenced along with or instead of a Government issued Statement of Work.

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

"Unlimited Rights," means rights to use, modify, reproduce, perform, display, release, or disclose Data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so, for an unlimited time.

COMPTROLLER GENERAL ACCESS TO INFORMATION FOR RECORDS EXAMINATION IN SUPPORT OF AUDITS

In accordance with 10 U.S.C. § 4022c, each contract that provides for payments in a total amount in excess of five million dollars ($5,000,000), shall provide for the Comptroller General, at

the discretion of the Comptroller General, opportunity to examine the records of any party to the contract or any entity that participates in the performance of the contract and/or Statement of Work, including any sub-performer(s) or subcontractors. However, the Comptroller General may not examine records pursuant to this Agreement more than three years after the final payment is made by the United States under the Agreement.

This requirement does not apply to entities (i) participating in the performance of contract with payments totaling less than five million dollars ($5,000,000), and (2) who have not entered into any other agreement that provides for audit access by a Government entity in the year prior to the date of this contract.

EXPORT CONTROL

1. The Seller shall comply, and require all sub-performers or subcontractors to comply, with the International Traffic in Arms Regulation (22 CFR pt. 121 et seq.), the DoD Industrial Security Regulation (DoD 5220.22-R) and the Department of Commerce Export Regulation (15 CFR pt. 770 et seq.), where applicable.

2. The Seller shall include this Section, suitably modified to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, for developmental prototype work.

ALLOWABLE COSTS

If the Seller performing under this contract is subject to Contract Accounting Standards on other agreements or contracts, then the allowable costs for projects/efforts executed under this contract on an expenditure reimbursement basis (i.e., not fixed price) are only allowable for reimbursement subject to the cost principles of Federal Acquisition Regulation (FAR) Part 31, Defense Federal Acquisition Regulation Supplement (DFARS) Part 231, and Navy and Marine Corps Acquisition Regulation Supplement (NMCARS) Part 5231, with all mention of Contractor understood to mean the Seller and all mention of Contracting Officer understood to mean Buyer or Agreements Officer. Notwithstanding the foregoing, the use of independent research and development (IR&D) costs
during the contract as cost sharing is permitted, whether or not the Government decides at a later date to reimburse any of the IR&D as allowable indirect cost, in accordance with 32 CFR 34.13 and 48 CFR 31.205-18(e).

LIMITATION OF LIABILITY AND DAMAGES; INDEMNIFICATION

1. In the event of any full or partial termination of this Agreement, or a project funded hereunder, by the Government, neither the Government nor NSTXL shall be liable for any loss of profits, revenue, or any indirect or consequential damages incurred by the PROTOTYPE LEVEL PERFORMER, its contractors, sub-performers, or customers as a result of such termination. Damages for such termination of this Agreement is limited solely to direct damages and costs and/or fees incurred as a result of any termination of this Agreement, and subject to mitigation of such damages by the PROTOTYPE LEVEL PERFORMER. In no instance shall the Government's liability for termination exceed the total amount due and unpaid to PROTOTYPE LEVEL PERFORMER under this Agreement. Similarly, in no instance shall NSTXL's liability for termination exceed the total amount due to PROTOTYPE LEVEL PERFORMER under this Agreement which has been paid by the Government to NSTXL to date for payment over to the PROTOTYPE LEVEL PERFORMER and that has not been so paid.

2. With regard to the activities undertaken pursuant to this Agreement, no Party shall make any claim against the other or the Government, the other's or the Government's employees, the other's or the Government's related entities (e.g. contractors, sub-performers), or employees of the other's or the Government's related entities for any injury or death of its own employees or employees of its related entities, whether such injury, death, damage or loss arises through negligence or otherwise, provided however, that in the event gross negligence, recklessness or willful misconduct is determined by a tribunal of competent jurisdiction to have occurred, this clause shall not be a bar to suit and/or recovery.

3. None of the Parties or the Government shall be liable to each other for consequential, punitive, special and incidental damages or other indirect damages, whether arising in contract (including warranty), tort (whether or not arising from the negligence of a Party or the Government) or

otherwise, except to the extent such damages are caused by a Party's or the Government's gross negligence, recklessness or willful misconduct or arise from third-party claims or pertain to breach of confidentiality obligations.

Under no circumstances will the above enumerated exceptions 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.

4. The PROTOTYPE LEVEL PERFORMER agrees to extend the waiver of liability set forth above in subparagraphs 2 and 3 to entities at any tier performing the Project Order under this Agreement by requiring them, through agreement, contract or otherwise, to agree to waive all claims against the Parties to this Agreement as well as the Government.

5. Each Party (an "Indemnifying Party") agrees to indemnify, hold harmless, and defend the other Party and the Government and their respective managers, officers, directors, employees, agents, affiliates, successors, and permitted assigns, against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including professional fees and reasonable attorneys' fees, arising out of any third-party claim alleging or arising from:
> 1. property damage or bodily injury, including death, caused solely by the willful misconduct of such Indemnifying Party, its agents, employees, or affiliates in connection with work under this Agreement,
> 2. such Indemnifying Party's infringement or wrongful use of intellectual property, including without limitation, Technical Data, software, or inventions, or
> 3. any failure by Indemnifying Party to comply with any applicable federal, state, or local laws, regulations, or codes in the performance of its obligations under this Agreement.

6. Notwithstanding the foregoing (including Sections 1-5, above), claims by a Party for contribution (or indemnity) from the other party toward third-party injury, damage, or loss are not limited, waived, released, or disclaimed.

7. Additionally, the Parties agree to the following:
> DISCLAIMER AND RELEASE. THE WARRANTIES, CONDITIONS, REPRESENTATIONS, OBLIGATIONS AND LIABILITIES OF PERFORMER, AND REMEDIES OF NSTXL AND THE GOVERNMENT, SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND IN SUBSTITUTION FOR, AND NSTXL AND THE GOVERNMENT EACH HEREBY WAIVES, RELEASES AND RENOUNCES ALL OTHER WARRANTIES AND OTHER OBLIGATIONS AND LIABILITIES OF PERFORMER, AND ANY OTHER RIGHTS, CLAIMS AND REMEDIES AGAINST PERFORMER, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY NONCONFORMANCE OR DEFECT IN ANY SERVICE OR DELIVERABLE PROVIDED UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO:

>> A) ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS;
>> B) ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE;
>> C) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY IN TORT, WHETHER OR NOT ARISING FROM THE NEGLIGENCE OF PERFORMER; AND
>> If
>> D) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY FOR LOSS OF OR DAMAGE TO ANY PROPERTY, INCLUDING WITHOUT LIMITATION ANY GOODS OR DELIVERABLE PROVIDED BY PERFORMER UNDER THIS CONTRACT.

> EXCLUSION OF SPECIFIED DAMAGES. PERFORMER SHALL HAVE NO OBLIGATION OR LIABILITY, WHETHER ARISING IN CONTRACT (INCLUDING WARRANTY), TORT WHETHER OR NOT ARISING FROM THE NEGLIGENCE OF PERFORMER, OR OTHERWISE, FOR ANY LOSS OF USE, REVENUE OR PROFIT OR FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES WITH RESPECT TO ANY NONCONFORMANCE OR DEFECT IN ANY DELIVERABLE OR OTHER THINGS PROVIDED UNDER THIS CONTRACT.

> Definition. For the purpose of this Article, "PERFORMER" includes The Boeing Company, its divisions, subsidiaries, the assignees of each, subcontractors, suppliers and affiliates, and their respective directors, officers, employees and agents.

23-05_BOEING_HPNT SUPPLEMENTAL INTELLECTUAL PROPERTY & PATENT RIGHTS AGREEMENT .

SUPPLEMENTAL INTELLECTUAL PROPERTY & PATENT RIGHTS AGREEMENT

Definitions:

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"Developed" as applied to an item, component, or process, means that such item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered "developed," the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component, or process be actually reduced to practice within the meaning of Title 35 of the United States Code. Developed as applied to Computer Software or Computer Software Documentation means that, (i) a computer program has been successfully operated in a computer and tested to the extent sufficient to demonstrate to reasonable persons skilled in the art that the program can reasonably be expected to perform its intended purpose; (ii) Computer Software, other than computer programs, has been tested or analyzed to the extent sufficient to demonstrate to reasonable persons skilled in the art that the software can reasonably be expected to perform its intended purpose; or (iii) Computer Software Documentation required to be Delivered under an agreement has been written, in any medium, in sufficient detail to comply with requirements under that agreement.

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"Government Purpose Rights" ("GPR") means the rights to: (a) Use, modify, reproduce, release, perform, display, or disclose Technical Data, Computer Software, or Computer Software Documentation within the Government without restriction; and (b) Release or disclose Technical Data, Computer Software, or Computer Software Documentation outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that Technical Data, Computer Software, or Computer Software Documentation for United States government purposes.

"Intellectual Property" ("IP") means any invention, discovery, trade secret, technology, scientific or technological development, computer software, or other form of expression that is in tangible form. Intellectual Property may be protected by patent, trademark, or copyright laws or it may be protected as a trade secret and/or marked with an IP legend ©, ®, TM, PATENT or License.

"Invention," as used in this Agreement, means any innovation or discovery that is or may be patentable or otherwise protectable under title 35 of the United States Code (U.S.C.).

"Limited Rights" means the rights to use, modify, reproduce, release, perform, display, or disclose Data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the Data outside the Government, use the Data for manufacture, or authorize the Data to be used by another party, except that the Government may reproduce, release, or disclose such Data or authorize the use or reproduction of the Data by persons outside the Government if-
(i) The reproduction, release, disclosure, or use is-
    (A) Necessary for emergency repair and overhaul; or
    (B) A release or disclosure to-
        (1) A Covered Government Support Contractor in performance of its covered Government support contract for use, modification, reproduction, performance, display, or release or disclosure to a person authorized to receive Limited Rights Data; or
        (2) A foreign government, of Data other than detailed manufacturing or process data, when use of such Data by the foreign government is in the interest of the Government and is required for evaluation or informational purposes;
(ii) The recipient of the Data is subject to a prohibition on the further reproduction, release, disclosure, or use of the Data; and
(iii) The Consortium, prototype level performer, or sub-agreement holder asserting the restriction is notified of such reproduction, release, disclosure, or use.

"Performer Agreement" means the agreement between NSTXL and a Performer, whose project proposal has been selected by the Government, in support of the Prototype Project.

"Prototype level performer" or "Performer" means Boeing.

"Patent" is a property right granted by the US Government, which gives the holder the exclusive right to exclude others from the manufacture, use and sale of the subject invention in the United States for a defined period of time. As property, the patent may be sold or assigned, pledged, mortgaged, licensed, willed, or donated, and the subject of contracts and agreements.

"Practical Application" as used in this Agreement, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in case of a machine or system; and, in each case, under such conditions as to establish that the invention, software, or related Data is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public or to the Government on reasonable terms.

"Project Order" means the Government document(s) issued to NSTXL reflecting the Government's decision to fund all or part of a selected proposal submitted in response to a Request for Solutions. The Project Order will identify the Prototype Project, the period of performance, the Statement of Work, Project Deliverable or Task Description Document, and the approved payment terms and conditions. The Project Order formalizes the scope of work and terms and conditions for performance by, and payment to, the Consortium Member as facilitated by NSTXL.

"Prototype Project" in the context of meeting the Other Transaction Authority is as follows: a prototype project addresses a proof of concept, model, reverse engineering to address obsolescence, pilot, novel application of commercial technologies for defense purposes, agile development activity, creation, design, development, demonstration of technical or operational utility, or combinations of the foregoing. A process, including a business process, may be the subject of a prototype project.

"Proprietary Information" means information, materials and Data which are designated as proprietary in writing by the Consortium and/or Performer, whether by letter or by use of an appropriate stamp or legend, prior to or at the same time any such information, materials or Data are disclosed to the Government. Notwithstanding the foregoing, materials, information or Data which are orally, visually, or electronically disclosed, or are disclosed in writing without an appropriate letter, stamp, or legend, shall constitute Proprietary Information if the Consortium, within thirty (30) calendar days after such disclosure, Delivers to the Government a written document or documents describing the material, information or Data and indicating that it is proprietary, provided that any disclosure of information by the Government prior to receipt of such notice shall not constitute a breach by the Government of its obligations to protect Proprietary Information.

"Restricted Rights," apply only to non-commercial Computer Software and mean the Government's right to-

(i) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time shared unless otherwise permitted by this Agreement;

(ii) Transfer a computer program to another Government agency without the further permission of the Contractor if the

transferor destroys all copies of the program and related Computer Software Documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this clause;

(iii) Make the minimum number of copies of the Computer Software required for safekeeping (archive), backup, or modification purposes;

(iv) Modify Computer Software provided that the Government may –

(A) Use the modified software only as provided in paragraphs (i) and (iii) of this definition; and

(B) Not release or disclose the modified software except as provided in paragraphs (ii), (v), (vi) and

(vii) of this definition;

(v) Permit contractors or subcontractors performing service contracts (as defined in 37.101 of the Federal Acquisition Regulation) in support of this or a related contract to use Computer Software to diagnose and correct deficiencies in a computer program, to modify Computer Software to enable a computer program to be combined with, adapted to, or merged with other computer programs or when necessary to respond to urgent tactical situations, provided that –

(A) The Government notifies the party which has granted restricted rights that a release or disclosure to Particular contractors or subcontractors was made;

(B) Such contractors or subcontractors are subject to the use and non-disclosure agreement at 227.7103-7 of the DFARS Supplement or are Government contractors receiving access to the Computer Software for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends;

(C) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the Computer Software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (iv) of this definition for any other purpose; and

(D) Such use is subject to the limitations in paragraphs (i) through (iii) of this definition;

(vi) Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use the Computer Software when necessary to perform the repairs or overhaul, or to modify the Computer Software to reflect the repairs or overhaul made, provided that –

(A) The intended recipient is subject to the use and non-disclosure agreement at DFARS 227.7103-7 or is a Government contractor receiving access to the software for performance of a Government contractor receiving access to the Computer Software for performance of a Government contract that contains a clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends;

(B) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the the Computer Software or use the Computer Software decompiled, dissembled, or reversed engineered by the Government pursuant to paragraph (iv) of this definition, for any other purpose; and

(vii) Permit covered Government support contractors in the performance of covered Government support contracts that contain the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, to use, modify, reproduce, perform, display, or release or disclose the Computer Software to a person authorized to receive restricted rights Computer Software, provided that –

(A) The Government shall not permit the covered Government support contractor to decompile, Disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse Engineered by the Government pursuant to paragraph (iv) of this definition, for any other purpose; and

(B) Such use is subject to the limitations in paragraphs (i) through (iv) of this definition.

"Subject Invention" means those inventions conceived or first actually reduced to practice under this Agreement.

"Technical 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 financial, administrative, cost or pricing, or management information, or information incidental to contract administration.

"Unlimited Rights," means rights to use, modify, reproduce, perform, display, release, or disclose Technical Data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so, for an unlimited time.

ARTICLE I. RIGHTS IN DATA, INTELLECTUAL PROPERTY

A.   In the performance of the Prototype Project funded under the Project Order, the following level and allocation of rights provided to the Government, and asserted by the PERFORMER have been agreed-to as follows:

Proprietary Data/Data Rights Assertions

In accordance with Article I, Paragraph (A)(2)(c), Data Rights Assertions are presented in Attachment 1, Tables 1 and 2, which are herein incorporated by reference.   The data rights assertions identified are those known as of the date of proposal submission.   After contract execution, Boeing reserves the right to update the assertions based on new information or inadvertent omission.

B.   Except for Technical Data, Computer Software, or Computer Software Documentation in which the Government has Unlimited Rights under Article I, Paragraphs (B)(1) (B)(2) and (B)(3), the Government shall have Government Purpose Rights (GPR) in perpetuity in such Data, (as defined above), including but not limited to Computer Software, and Computer Software Documentation Delivered under this Project Order.

1.   The Government shall have Unlimited Rights in Data for the following:

a.   Form, Fit, and Function Technical Data;

b.   Corrections or changes to Data furnished to the PERFORMER by the Government; Technical Data, Computer Software, and Computer Software Documentation otherwise publicly available or Data that has been released or disclosed by the PERFORMER without restrictions on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in such Technical Data, Computer Software, and Computer Software Documentation to another party or the sale or transfer of some or all of a business entity or its assets to another party;

c.   Studies, analyses, test data, or similar data produced for the Prototype Project, when the study, analysis, test, or similar work was specified as an element of performance, excluding the PERFORMER's internal development milestones; and

d.   Data necessary for operation, maintenance, installation, or training.

2.   Source of Developmental Funds for Determining Applicable Rights Restrictions.

a.   For the purpose of determining the source of developmental funds for data rights purposes, the Government's contribution towards development costs includes any funds paid by the Government directly under this Project Order or any funds paid by the Government under any other contracts or agreements related to the same solution proposed in support of the Prototype Project. However, costs charted to indirect cost pools, costs not allocated to a government contract, or any combination thereof, shall be considered private expense.

b.   It is agreed that as a condition of award of this Agreement, and notwithstanding the conditions of any notice appearing thereon, the Government shall not have Unlimited Rights in and to the Data contained in the proposal, upon which this contract is based.

c.   Identification and Assertion of Use, Release, or Disclosure Restrictions - The Government shall have Limited Rights in Data and Restricted Rights in Computer Software Delivered to the Government that was developed outside of this Agreement not at government expense.   The PERFORMER (with their subcontractors or suppliers) making a data rights assertion for such Data and Computer Software generated outside of this Agreement not at government expense shall list in a Rights Assertion Table (RAT): (1) Data or computer software to be furnished with restrictions; (2) basis for assertion; (3) asserted rights category; (4) name of person(s) or entity(s) asserting restrictions.

d.   Sufficient information shall be presumed to be at least accounting records showing the source of developmental funding for each item, component, or process that is described in a Data or item listed in the RAT. The identification and assertion requirements apply only to Data, including Computer Software documentation, or Computer Software to be delivered with other than Unlimited Rights. Notification and identification are not required for restrictions based solely on copyright, trademark or commercial license.

3. Data or Computer Software that will be Delivered, furnished, or otherwise provided to the Government under the performance of the Prototype Project and funded under the Project Order, in which the Government has previously obtained rights, shall be Delivered, furnished, or provided with the pre-existing rights, unless the parties have agreed otherwise in an individual prototype project, or any restrictions on the Governments rights to use, modify, reproduce, display or disclose the Data or Computer Software have expired or no longer apply.

4. The PERFORMER, their sub-Agreement holders and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose Data, Computer Software, and Computer Software Documentation furnished to the Government with less than Unlimited Rights. However, if the Government desires to obtain additional rights in such selected Data, Computer Software, and Computer Software Documentation in which it has other than Unlimited Rights, the PERFORMER agrees to promptly enter into negotiations with the Agreements Officer and use reasonable efforts to determine whether there are acceptable terms for transferring such rights. All Data, Computer Software, or Computer Software Documentation in which the PERFORMER has granted the Government additional rights shall be listed or described in a license agreement and added as a separate attachment to the Agreement or a part of an individual prototype project. The license shall enumerate the additional rights granted the Government in such selected Data, Computer Software, and Computer Software Documentation and any terms of use, transferability, and rights.

5. Markings for Data and Computer Software developed under the Agreement: Except for Technical Data, Computer Software, and Computer Software Documentation covered under Article 1, Paragraph (B)(7) below, including those that cannot be segregated, and Data, Computer Software, and Computer Software Documentation Delivered with Unlimited Rights, Data, Computer Software, and Computer Software Documentation to be Delivered under this Agreement to the Government that is subject to restrictions on use, duplication or disclosure shall be marked with the following legend:

Agreement No.
National Security Technology Accelerator (NSTXL) Consortium
Consortium Contact Information
Prototype Project Expiration Date

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these Data and/or Computer Software are restricted in accordance with the terms of the above-referenced Agreement. ~~the~~ *Any reproduction of these technical data or portions thereof marked with this legend must also reproduce this marking.*

6. Background Data and Computer Software markings: For Data, Computer Software, and Computer Software Documentation for which data rights assertions apply and such Data, Computer Software, and Computer Software Documentation to be Delivered under this Agreement to the Government that is subject to restrictions on use, duplication or disclosure as provided under the assertions shall be marked with the following legends:

a. Data being furnished with Limited Rights:

LIMITED RIGHTS DATA
Agreement No.
National Security Technology Accelerator (NSTXL) Consortium
Consortium Contact Information

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these Data are restricted in accordance with the terms of the above-referenced Agreement. Any reproduction of these Data or portions thereof marked with this legend must also reproduce this marking.

b. Computer Software and Computer Software Documentation being furnished with Restricted Rights:

RESTRICTED RIGHTS
Agreement No.
National Security Technology Accelerator (NSTXL) Consortium
Consortium Contact Information

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this computer software and/or computer software documentation are restricted in accordance with the terms of the above-referenced

Agreement. Any reproduction of these Data or portions thereof marked with this legend must also reproduce this marking.

7. Pre-existing Data markings: If the terms of a prior contract or license permitted the PERFORMER to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose Data, Computer Software, or Computer Software Documentation Deliverable under this Agreement, and those restrictions are still applicable, the PERFORMER may mark such Data, Computer Software, or Computer Software Documentation with the appropriate restrictive legend for which the Data, Computer Software, or Computer Software Documentation qualified under the prior contract or license unless the Government receives such Data, Computer Software, or Computer Software Documentation with less restrictions under this Agreement.

8. Non-Data Markings: The PERFORMER may mark information other than Data, such as information incidental to agreement administration, such as financial and/or management information, Deliverable under this Agreement that qualifies as Proprietary Information with the appropriate proprietary marking.

9. Unmarked Data: The Government shall have unlimited rights in all unmarked Data Delivered to the Government. In the event that the PERFORMER learns of a release to the Government of its unmarked Data that should have contained a restricted legend, the PERFORMER will have the opportunity to cure such omission going forward by providing written notice to the Agreements Officer within one year of the erroneous release. "Delivered," "Deliverable" or "Delivery" means (a) required to be formally Delivered under this Contract's CDRLs, in compliance with DFARS 215.470, MIL-HDBK-245D and DoD 5010.12-M; and (b) Computer Software executable code embedded in Deliverable hardware. Providing access and furnishing outside of (a) or (b) are not "Delivered."

10. Disclaimer of Liability: Notwithstanding the above, the Government shall not be restricted in, nor incur any liability for, the disclosure and use of: Data not identified with a suitable notice or legend as set forth in this Section; nor, information contained in any Data for which disclosure and use is restricted under the security requirements of this Agreement, if such information is becomes generally known without breach of the above, is properly known to the Government or generated by the Government independent of carrying out responsibilities under this Agreement, is rightfully received from a third party without restriction, or is included in Data which the PERFORMER is required to furnish to the Government without restriction on disclosure and use.

11. Validation of Restrictive Markings on Data and Computer Software.

    a. Title 10 U.S. C. § 2321- Validation of proprietary data restriction is incorporated into this Agreement by reference, with all mention of the Government, or Department of Defense to mean the Government; Contractor understood to mean the PERFORMER; and all mention of Contracting Officer understood to mean Agreements Officer.

    b. Unjustified Data markings: The rights and obligations of the parties regarding the validation of restrictive markings on Data or Computer Software furnished or to be furnished under this Agreement are contained in the Validation of Restrictive Markings on Data and Computer section of this Agreement. Notwithstanding any provision of this Agreement concerning Inspection and Acceptance, the Government may ignore or, at the PERFORMER's expense, correct or strike a marking if, in accordance with the procedures in this Agreement, a restrictive marking is determined to be unjustified.

    c. A nonconforming marking is a marking placed on Data or Computer Software Delivered or otherwise furnished to the Government under this Agreement that is inconsistent with the obligations under this Agreement. Correction of nonconforming markings is not subject to the Validation of Restrictive Markings section of this agreement. However, if the Agreements Officer notifies the PERFORMER of a nonconforming marking and the PERFORMER fails to remove or correct such marking within sixty (60) days, the Government may ignore or, at the PERFORMER's expense, remove or correct any nonconforming marking. Such nonconformance would be subject to the Inspection and Acceptance terms for Deliverables. Notwithstanding the foregoing, the PERFORMER may include supplemental markings, including for Unlimited Rights, that are not inconsistent with this Agreement.

12. Throughout performance of this agreement, the PERFORMER or its suppliers that will Deliver Data and Computer Software with other than Unlimited Rights, shall- (1) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only as allowed by the terms of this Agreement; and, (2) Maintain records sufficient to justify the validity of any restrictive markings on Data and Computer Software Delivered under this Agreement.

13. The PERFORMER reserves the right to protect by copyright original works developed under the Prototype Project. All such copyrights will be in the name of the PERFORMER. The PERFORMER hereby grants to the U.S. Government a non-exclusive, non-transferable, royalty-free, fully paid-up license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, for Government Purposes, any copyrighted materials developed under the Prototype Project executed under the Performer Agreement and funded by the Project Order, and to authorize others to do so, subject to the limitations on disclosure contained in the Performer Agreement.

14. In the event Data is exchanged with a notice indicating that the Data is protected under copyright as a copyrighted work and it is also indicated on any submission 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 and the Prototype Project executed under the Performer Agreement with the written permission of the copyright holder.

15. The PERFORMER shall not, without the written approval of the Agreements Officer, incorporate any copyrighted data in the Data to be Delivered under this Agreement unless the PERFORMER is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the Deliverable Data, and has affixed a statement regarding the license or licenses obtained to the Data transmittal document.

16. Copyrighted Data that existed or was produced outside of this Agreement and is unpublished - having only been provided under licensing agreement with restrictions on its use and disclosure - and is provided under this Agreement shall be marked as unpublished copyright in addition to the appropriate license rights legend restricting its use and treated in accordance with such license rights legend markings restricting its use.

17. The PERFORMER is responsible for affixing appropriate markings indicating the rights of the Government on all Data Delivered under the Prototype Project. Notwithstanding the foregoing, the Government agrees to reasonably cooperate with PERFORMER to apply appropriate markings to Data upon request.

18. The Government agrees not to remove any copyright notices placed on Data and to include such notices on all reproductions of the Data.

19. In addition to Data specified in this Agreement and in any Prototype Project executed under the Project Order to be Delivered hereunder, the Government may, at any time during the performance of the Prototype Project or within a period of three (3) years after acceptance of all items (other than Data) to be Delivered under the Performer Agreement, or the termination of the Performer Agreement, order any Data first generated under the Performer Agreement or any sub-Agreement hereunder, except for Data related to the PERFORMER's internal development milestones (as defined in the Statement of Work or Task Description Document). When the Data is ordered, the PERFORMER shall be compensated by the Government for converting the Data into the prescribed form, for reproduction and Delivery beyond the budget set forth herein. The obligation to Deliver the Data of a sub-Agreement holder and pertaining to an item obtained from the subcontractor shall expire three (3) years after the date the PERFORMER accepts the last Delivery of that item from that sub-Agreement holder under this Agreement.

20. The Government shall retain its rights in the unchanged portions of any Computer Software or Computer Software Documentation Delivered under the Prototype Project that the Consortium uses to prepare, or includes in, derivative Computer Software or Computer Software Documentation.

21. The PERFORMER shall include this clause, suitably modified to identify the parties, in all sub-agreements or lower tier agreements, regardless of tier.

22. The obligations of the Government and the PERFORMER under this Article shall survive after the expiration or termination of the Performer Agreement.

23. For purposes of determining the Government's rights in Data and Computer Software developed under this Agreement, the Parties agree that developmental costs funded at Government expense under this Agreement shall be considered development at Government expense for purposes of any follow on or future acquisition contracts, including FAR and DFARS based contracts, notwithstanding the definition of "contract" in any such FAR based contract that is used in relation to determination of the Government's data rights.

C.   Right to Develop Independently

Nothing in this Agreement will impair any Party's right to independently acquire, license, develop or have developed, utilize or otherwise exploit information and technology with the same or similar uses or functions as the information or technology

that is the subject of the Agreement or any Prototype Project issued pursuant to the Performer Agreement, provided that such Party complies with the terms of this Agreement.

ARTICLE II. PATENTS

The PERFORMER agrees to be bound by the following rights and responsibilities with respect to any Subject Invention (i.e. any Invention made in the performance of the Statement of Work or TDD) or Prototype which is the principal objective of the Prototype Project executed under the Performer Agreement.

A.   Allocation of principal rights

1.   The PERFORMER shall retain ownership throughout the world to each Subject Invention consistent with the provisions of this section, provided the PERFORMER has (a) pursued a patent application on such Subject Invention; and (b) maintained any awarded patent and (c) has not notified the Government (in accordance with subclause (B) below -- Invention Disclosure, Election of Title, and Filing of Patent Application) that the PERFORMER <u>does not</u> intend to retain title.

2.   The PERFORMER shall retain ownership throughout the world to background inventions. Any invention related to, conceived of, or first reduced to practice in support of a PERFORMER's internal development milestone shall be a background invention of the PERFORMER and shall not be classified as a Subject Invention, provided that an invention conceived of in support of an internal development milestone that is first reduced to practice under the Project Order in support of <u>other than</u> internal development milestones shall be considered a Subject Invention.

3.   The Government is granted a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the Subject Invention throughout the world.

B.   Invention Disclosure, Election of Title, and Filing of Patent Application

1.   Disclosure of Subject Inventions. If the PERFORMER -- acting on behalf of its company, institution, personnel, subcontractors and/or agents -- <u>elects to retain title</u> to a Subject Invention, the PERFORMER shall disclose each Subject Invention to the Agreements Officer within (a) eight (8) months of actual knowledge of a Subject Invention being completed or (b) within two (2) months after the Subject Invention is disclosed in writing to the PERFORMER's personnel responsible for patent matters, whichever is first in time.

2.   Election of Subject Inventions. If the PERFORMER determines that it does not intend to retain title to any Subject Invention, the PERFORMER shall notify the Agreements Officer, in writing, within eight (8) months of disclosure of the Subject Invention to the Agreements Officer in accordance with Section (B)(1) above. However, in any case where publication, sale, or public use has initiated the one (1) year statutory period wherein valid patent prosecution can still be obtained in the United States, the period for such notice is shortened to at least sixty (60) calendar days prior to the end of the statutory period.

3.   The PERFORMER may request extensions of time for disclosure, election, or filing under Article II, Paragraphs B.1 and B.2 of this clause. The Government will normally grant the extension unless there is reason to believe the extension would prejudice the Government's interests.

C.   Upon the Agreements Officer's written request, the PERFORMER shall convey title to any Subject Invention to the Government under any of the following conditions:

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

2.   In those countries in which the PERFORMER fails to file patent applications within the times specified within this Article; provided, that if the PERFORMER has filed a patent application in a country after the times specified in this Article, but prior to its receipt of the written request by the Government, the PERFORMER shall continue to retain title in that country; or;

3.   In any country in which the PERFORMER 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.

D.   Minimum Rights to the PERFORMER and protection of the PERFORMER's right to file.

1. The PERFORMER shall retain a nonexclusive, royalty-free license throughout the world in each Subject Invention to which the Government obtains title, except if the PERFORMER fails to disclose the Subject Invention within the times specified within this Article. The PERFORMER's license extends to the U.S. (including Canada) subsidiaries and affiliates, if any, within the corporate structure of which the PERFORMER is a party and includes the right to grant licenses of the same scope to the extent that the PERFORMER was legally obligated to do so at the time the Prototype Project was awarded. The license is transferable only with the approval of the Government, except when transferred to a successor of that part of the business to which the Subject Invention pertains. The Government's approval for license transfer shall not be unreasonably withheld.

2. The PERFORMER's license, as immediately described above in Article II, Paragraph (D)(1), 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 C.F.R. Part 404. However, the license shall not be revoked in that field of use or the geographical areas in which the PERFORMER has achieved practical application and continues to make the benefits of the Subject 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 PERFORMER, its licensees, or its subsidiaries or affiliates have failed to achieve practical application in that foreign country.

3. Before revocation or modification of the license, the Agreements Officer shall furnish the PERFORMER a written notice of its intention to revoke or modify the license, and the PERFORMER 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.

4. The PERFORMER has the right to appeal, in accordance with 37 CFR part 404 and agency regulations, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

5. Action to protect the Government's interest

    a. The PERFORMER agrees to execute or to have executed and promptly Deliver to the Agreements Officer all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those Subject Inventions to which the PERFORMER elects to retain title, and (ii) convey title to the Government when requested under and in accordance with this Article to enable the Government to obtain patent protection throughout the world in that Subject Invention.

    b. The PERFORMER agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the PERFORMER each Subject Invention made under the Prototype Project in order that the PERFORMER can comply with the disclosure provisions of this Article. The PERFORMER shall instruct employees, through employee agreements or other suitable educational programs, on the importance of reporting Subject Inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

    c. The PERFORMER shall notify the Agreements Officer of any decisions 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.

    d. The PERFORMER 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 Government support under Agreement No. N00164-19-9-0001, awarded by NSWC Crane Division. The Government has certain rights in the Invention."

6. ,The PERFORMER agrees that, with respect to any Subject Invention in which it has retained title, the Government has the right to require the PERFORMER, a prototype inventor, an assignee, or exclusive licensee of a Subject Invention to grant a non-exclusive license to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the PERFORMER, a prototype inventor, an assignee, or exclusive licensee refuses such a request, the Government has the right to grant such a license itself, if the Agreements Officer determines that: (1) Such action is necessary because the PERFORMER, a prototype inventor, an assignee, or a licensee has not taken, or is not expected to take within a reasonable time, effective steps, consistent with the intent of this

Agreement, to achieve practical application of the Subject Invention; or (2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the PERFORMER, prototype inventor, an assignee, or their licensees; or (3) Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by the PERFORMER, a prototype inventor, an assignee, or licensees.

7.   The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of the Prototype Project, including any subcontract at any tier.

8.   The PERFORMER shall report to the Agreements Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on or under the performance of the Prototype Project of which the PERFORMER has knowledge. In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of the Prototype Project, or out of the use of any supplies furnished or work or services performed under the Prototype Project, the PERFORMER shall furnish to the Government, when requested by the Agreements Officer, all evidence and information in the PERFORMER's possession pertaining to such claim or suit. Such evidence and information shall be furnished at the expense of the Government except where the PERFORMER has agreed to indemnify the Government.

   a.   The PERFORMER shall include this clause (D)(7) suitably modified, to identify the Parties in all sub-agreements or lower tier agreements, regardless of tier.

   b.   The obligations of the Government and the PERFORMER under this Article shall survive after the expiration or termination of the Performer Agreement.

ATTACHMENT 1
Table 1: Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Data or Computer Software (DFARS 252.227-7017 (JAN 2023)).

The Offeror asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following Data or computer software should be restricted:

Data or Computer Software to be Furnished With Restrictions*	Basis for Assertion**	Asserted Rights Category***	Name of Person Asserting Restrictions****
Computer Software as it pertains to Precision IMU Calibration Algorithms and Software, to the extent required to be Delivered, including any customizations that do not rise to the level of new technology developed at Government expense.	Developed exclusively at private expense	Restricted Rights	The Boeing Company
Computer Software as it pertains to Boeing All-Source Position, Navigation and Timing (PNT) Algorithms and Software, to the extent required to be Delivered, including any customizations that do not rise to the level of new technology developed at Government expense.	Developed exclusively at private expense	Restricted Rights	The Boeing Company
Boeing Pre-existing Machine Learning Training Software and Algorithms, to the extent required to be Delivered, including any customizations that do not rise to the level of new technology developed at Government expense.	Developed exclusively at private expense	Restricted Rights	The Boeing Company
Boeing Training Data, to the extent required to be Delivered, including any customizations that do not rise to the level of new technology developed at Government expense.	Developed exclusively at private expense	Limited Rights	The Boeing Company
Computer Software and Data for other than commercial computer software, items, component, or processes developed under the program, including but not limited to Machine Learning Training Software and Machine Learning Inference Software, to the extent required to be Delivered.	Developed partially at private expense	Government Purpose Rights in perpetuity	The Boeing Company
Computer Software as it pertains to Novel online learning algorithm for delay-tolerant hardware implementation for the neuromorphic adaptive core, to the extent required to be Delivered, including any customizations that do not rise to the level of new technology developed at Government expense.	Developed exclusively at private expense	Restricted Rights	HRL Laboratories, LLC
Data as it pertains to Low SWAP efficient hardware implementation of wide instantaneous bandwidth neuromorphic adaptive core (NeurACore), to the extent required to be Delivered, including any customizations that do not rise to the level of new technology developed at Government expense.	Developed exclusively at private expense	Limited Rights	HRL Laboratories, LLC
Computer Software as it pertains to Physics-enhanced reservoir computer for real-time radar range Doppler map learning, to the extent required to be Delivered, including any customizations that do not rise to the level of new technology developed at Government expense.	Developed exclusively at private expense	Restricted Rights	HRL Laboratories, LLC

Data as it pertains to Temperature-compensated RF transceiver using a neural network, to the extent required to be Delivered, including any customizations that do not rise to the level of new technology developed at Government expense.	Developed exclusively at private expense	Limited Rights	HRL Laboratories, LLC

*   For Data (other than computer software documentation) pertaining to items, components, or processes developed at private expense, identify both the Deliverable Data and each such item, component, or process. For computer software or computer software documentation identify the software or documentation.

**   Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions. For Data, other than computer software documentation, development refers to development of the item, component, or process to which the data pertain. The Government's rights in computer software documentation generally may not be restricted. For computer software, development refers to the software. Indicate whether development was accomplished exclusively or partially at private expense. If development was not accomplished at private expense, or for computer software documentation, enter the specific basis for asserting restrictions.

***   Enter asserted rights category (e.g., government purpose license rights from a prior contract, rights in SBIR data generated under another contract, limited, restricted, or government purpose rights under this or a prior contract, or specially negotiated licenses).

****   Corporation, individual, or other person, as appropriate.

*****   Enter "none" when all data or software will be submitted without restrictions.

Date   _____

Printed Name and Title   _____

     _____

Signature   _____

<u>Table 2: Identification **of Commercial Data and/or Commercial Computer Software**</u>

DFARS 252.227-7017, 252.227-7013 and DFARS 252.227-7014 do not require Boeing to identify and assert restrictions on the Government's rights in Commercial Computer Software and Commercial Data relating to Commercial Items. In the following table, Boeing identifies Commercial Computer Software and Commercial Data to be Delivered or otherwise furnished to the Government under this contract to avoid any misunderstanding regarding the license rights granted to the Government in this Computer Software and Data. This identification does not in and of itself make the Commercial Items identified in the table subject to DFARS 252.227-7013, 252.227-7014, 252.227-7017, -7019 or -7037.

The Contractor asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following Commercial Data or Computer Software should be restricted:

Data or Computer Software to be Furnished With Restrictions	Basis for Assertion	Asserted Rights Category	Name of Person Asserting Restrictions
Data as it pertains to Commercial Inertial Management Unit (IMU), to the extent required to be Delivered, including any customizations that do not rise to the level of new technology developed at Government expense	Commercially available item	Commercial license under DFARS 252.227-7015	The Boeing Company on behalf of Commercial IMU supplier.
Embedded Computer Software as it pertains to Commercial IMU, to the extent required to be Delivered.	Commercially available item, embedded executable rights.	Embedded Executable Rights, see Note 1.	The Boeing Company on behalf of Commercial IMU supplier.
Computer Software as it pertains to open source software utilized in the Machine Learning Training Software, if used and to the extent required to be Delivered.	Open Source Software	Open Source Software (OSS) License in accordance with the applicable OSS used	The Boeing Company on behalf of its Suppliers and applicable Open Source Projects

*   "Delivered," "Deliverable" or "Delivery" means (a) required to be formally delivered under this Contract's CDRLs, in compliance with DFARS 215.470, MIL-HDBK-245D and DoD 5010.12-M; and (b) Computer Software executable code embedded in deliverable hardware. Providing access and furnishing outside of (a) or (b) are not "Delivered."

Note 1: The Government may use, modify, reproduce, release, perform, display or disclose such computer software within the Government with the hardware in which it was Delivered; and release or disclose such computer software outside the Government and authorize persons to whom release or disclosure has been made, to use, modify, reproduce, release, perform, display or disclose the computer software with the hardware in which it was Delivered for United States Government purposes. Reverse engineering is not permitted. No source code will be Delivered hereunder or under any Deferred Ordering clause.